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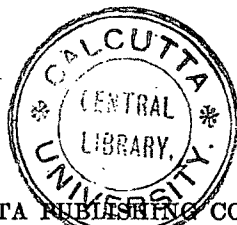
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## REFLECTIONS ON THE "WORLD REVOLUTION" OF 1940\*

ROBERT C. BROOKS

*Swarthmore College*

### I

So controversial is the subject of this address—"Reflections on the 'World Revolution' of 1940"—that a few words of justification are in order. You may be assured that it was not chosen without considerable thought and trepidation. To begin with, I made a study of the addresses of my thirty-four predecessors, as presented in the pages of the AMERICAN POLITICAL SCIENCE REVIEW. Without exception, these papers impressed me as wise, scholarly, finely stated, and cogently argued. Occasionally they were lightened by the lambent play of humor. On the other hand, several of them were decidedly dry—a quality less refreshing in discourses than in wines. Many of my predecessors dealt penetratingly and profoundly with topics taken from the fields of specialization wherein they were masters, often the greatest of American masters. Others discussed broadly and philosophically the nature of political science, its relations to the social sciences in general, or the problems encountered in teaching this science.

Of course so brief a summary cannot do justice to the almost infinite variety of materials presented by past presidents of our Association. There was, however, one type of subject which as a rule they avoided—that of contemporary, controversial political affairs. Even during the years of the First World War and immediately thereafter, this proved to be the case with only one or two exceptions. No doubt the motive which prompted most of my predecessors to avoid issues of the day was a sound one. Dignified

\* Presidential address delivered before the American Political Science Association at its thirty-sixth annual meeting, Chicago, Illinois, December 28, 1940.

presidents of the American Political Science Association (and if they were not dignified, how did they come to be elected to that high office?) should concern themselves with truths eternal, not with the fustian and the rattle of commonplace, partisan squabbles.

If the topic of the present discourse thus breaks with precedent, the justification must be that the year under consideration has brought forth most unusual, even world-shattering, events. These events constitute a challenge to every citizen, particularly to every political scientist. We of the Association could not escape them if we would. Literally, they have forced themselves into the center of our thought by day and by night, thrusting other matters aside; nor is it too much to say that they have profoundly modified our basic conceptions during the critical later half of this fateful twelvemonth. Indeed one might inquire: What else is there to talk about so long as we confront this riddle of the political Sphinx under the injunction: "Answer or die"? Admitted that the topic of this address is too vast for adequate discussion in one short address. Obviously no one can now speak with finality upon it: the events which 1940 brought forth are too close to us. In their leisurely fashion, historians will be engaged for the next half-century accounting for some of these events, the downfall of the Third French Republic for example. Political scientists, however, live for the most part in the here and now. Consequently, to the limit of their powers, they are obliged to attempt a working interpretation of world conditions. Furthermore, both as citizens and as teachers they must act upon that interpretation.

## II

One query remains in my mind regarding the title chosen for this address; hence the ironic quotation marks surrounding the words "World Revolution."<sup>1</sup> Usage stemming from authorities so diverse as Rauschning and Roosevelt may justify the use of that phrase.<sup>2</sup> On the other hand, revolt must be successful before it becomes revolution, whereas so far—thanks to Britain's sturdy re-

<sup>1</sup> Edmund Burke might have raised the same question, but did not, when in 1790 he published his famous *Reflections on the Revolution in France*. If a definition of revolution in the political sense be desired, the following is hazarded: A political revolution is the sudden overthrow of one type of government and the setting up of a distinctly different type in its place, by violence or the threat of violence coming largely from internal sources.

<sup>2</sup> H. Rauschning, *The Revolution of Nihilism; Warning to the West* (1939); Franklin D. Roosevelt's speech, July 19, 1940, quoted later in the text.

sistance—Herr Hitler is not master of Europe. It is true that he has overthrown eight or nine governments; but the violence (or threat of violence) which brought about their downfall was applied from the outside, rather than from the inside. If the external pressure which has created the new régimes in the occupied territory were relaxed, in all probability they would collapse promptly. Certainly then it may be questioned whether so good a word as "revolution" deserves the ignoble use to which it is now being put by Nazi apologists. To be sure, there was a revolution, perhaps two revolutions, in Russia during the single year 1917. The upsets that occurred in Italy in 1922 and in Germany in 1933 also probably deserve that designation. But so far as Germany and Italy are now concerned, the process upon which they are engaged is not so much a revolution as a war of conquest pure and simple, accompanied by demands for the surrender and break-up of empires, for the annexation of weaker states, for the seizure not only of territory but of private property as well, for the abolition of all the political rights of citizens of the vanquished countries—in short, demands for *Lebensraum*, demands utterly without fixed limits, political or economic. That process, known as "total war," is veneered only to the thinnest possible degree by revolutionary theory; in particular, the use of the word "socialist" as part of the title of the dominant one-party system in the Third Reich is utterly misleading. Moreover, this alleged "world revolution" is in no sense new or forward-looking; on the contrary, it harks back to the most primitive of all political conceptions, dominance supported by the *Führerprinzip* inside, domination by violence everywhere outside. "It is a revolution," as President Franklin D. Roosevelt has so aptly characterized it, "imposed by force of arms which threatens all men everywhere. It is a revolution which proposes not to set men free but to reduce them to slavery." In the last analysis, choice of terms is left to the members of this Association. Call what is going on in Europe "world revolution" if you will, but remember that it presents all the outward aspects of a gigantic plundering expedition, perhaps the most vicious and sordid that has been attempted in the history of mankind.

### III

With regard to the method of treating a topic which is so highly controversial, you must not anticipate from me that cool detach-

ment usually expected from, but not always exhibited by, those who are called scientists. No matter how judicial we may seek to be in dealing with absolutism, it is worth recalling that many political philosophers of the past have reached adverse conclusions on the subject. How could it have been otherwise? Being not only philosophers, hence attached to the principles of truth, justice, and humanity, but also men and citizens of strong, independent convictions, it was inevitable that they should mingle sharp sarcasm with blunt condemnation in their reflections upon despotism. Plato, poet as well as philosopher, was outspoken, even vitriolic, in his references to the petty tyrants who frequently dominated Greek city states. To him, they were the most depraved of men, moral as well as political perverts; the cities under their control he considered the most miserable of cities. Catholic in his treatment of the subject, Aristotle was perhaps less caustic; nevertheless his characterization of the baser type of tyrant was factual and complete, also because of its restraint somewhat more effective.<sup>3</sup> Machiavelli, who was a realist rather than a philosopher, is popularly considered to have been an apologist for despotism. And indeed many pages of *The Prince*, uncritically read, lend themselves to such an interpretation. It must not be forgotten, however, that the author of that brief work, immortal as it is and deserves to be, had been a devoted servant of the Republic of Florence and was at heart a sincere republican. At the time, Machiavelli found himself unemployed because of the return to power of the Medicean tyrants. To state the matter frankly, then, *The Prince* is a somewhat servile application for a job under the new régime in Florence, therefore unlikely to include anything displeasing to the magnificent Lorenzo or to his ilk. Nevertheless, Machiavelli does not hesitate to condemn those "who have obtained a principality by wickedness."

<sup>3</sup> Aristotle's great tolerance is revealed in his dictum (*The Politics*, translated by William Ellis, Bk. III, ch. ix) that "in all disputes upon government each party says something that is just." Unfortunately, however, this provides neither for quantitative measurement nor for consideration of the negative as well as of the positive factor involved. To illustrate: we must all repeat with Aristotle the phrase "something that is just," but the question immediately rises: How much of what a given party to any dispute upon government says is just? The next question, involving the negative factor—certainly a much more pertinent one in the case of a party arguing in favor of dictatorship—must be: How much of what it says is unjust? My own estimate based upon long reading of the apologists for totalitarianism would be that they say less than five per cent that is just and more than ninety-five per cent—perhaps exactly 99 44/100—that is unjust.



In words strongly suggestive of the methods of contemporary dictators, he concludes his discussion of these unsavory personages as follows: "It cannot be called talent to slay fellow-citizens, to deceive friends, to be without faith, without mercy, without religion: such methods may gain empire but not glory."

Prior to the advent of modern democracy, no political thinker was more bitter in his condemnation of despotism than Montesquieu. "We cannot mention these monstrous governments without horror," he observes—a sentiment which finds expression in every passage he devotes to the subject. "The principle of despotic government is subject to continual corruption, because it is even in its nature corrupt. . . . A government cannot be unjust without having hands to exercise its injustice. Now it is impossible but that those hands will be grasping for themselves. The embezzling of the public money is therefore natural in despotic states."<sup>4</sup> Thus Montesquieu saw clearly both the injustice and the corruption, which no matter how they try to conceal them, are as characteristic of contemporary dictatorships as of the "monstrous governments" he had in mind.

What these citations prove (and they might have been multiplied indefinitely)<sup>5</sup> is that philosophic detachment does not go the length

<sup>4</sup> *The Spirit of the Laws*, Bk. III, ch. 10; Bk. VIII, ch. 10; Bk. V, ch. 15. Two other passages are also pertinent: "A despotic government does all the mischief to itself that could be committed by a cruel enemy, whose arms it were unable to resist" (Bk. IX, ch. 4); and "when the savages of Louisiana are desirous of fruit, they cut down the tree to the root, and gather the fruit. This is an emblem of despotic government." These last two sentences constitute the whole of Chapter 13, Book V, which is one of the shortest in a great book of mercifully short chapters. Doubtless Montesquieu made it thus brief for purposes of emphasis. What he said therein came true for France after the fall of Napoleon. It will be true of Germany after the fall of Hitler.

<sup>5</sup> Rousseau's writing, for example, is one long protest against despotism. Characteristic is the following passage from *The Origin of Inequality*: "It is from the midst of . . . disorder and . . . revolutions, that despotism, gradually raising up its hideous head and devouring everything that remained sound and untainted in any part of the State, would at length trample on both the laws and the people, and establish itself on the ruins of the republic. . . . At length the monster would swallow up everything, and the people would no longer have either chiefs or laws, but only tyrants. From this moment there would be no question of virtue or morality; for despotism *cui ex honesto nulla est spes*, wherever it prevails, admits no other master; it no sooner speaks than probity and duty lose their weight and blind obedience is the only virtue which slaves can still practice." And Locke, in his *Second Treatise of Government*, ch. xv, writes: "despotical power . . . is a power which neither Nature gives, . . . nor compact can convey. . . . Absolute dominion, however placed, is so far from being one kind of civil society that it is as inconsistent with it as slavery is with property."

of ignoring or minimizing the defects of any type of government, despotism included. No matter how successful it may be temporarily, no matter how weak or unsuccessful its opponents, the assumption clearly is that there are other factors which must be taken into account. Truth, justice, humane conduct, may be "imponderables," but they weigh heavily in the scales of philosophic appraisal. One of the grossest errors committed by the dictators of today is their open and blatant contempt for these imponderables. As a result, no one can trust them, neither friends nor enemies, neither their citizens nor foreigners; least of all can they trust each other. They even ignore Machiavelli's sage and cynical advice that "while it is unnecessary for a prince to have all the good qualities I have enumerated—it is very necessary to appear to have them."<sup>6</sup>

## IV

How, then, have the events of 1940, particularly the military successes of Hitler, affected popular thinking on contemporary despotism? Manifestly in two principal ways: first, estimates of the strength of democratic institutions have been weakened; second, estimates of the power of dictatorships have been exaggerated. As to the former, we can scarcely plead surprise. The defects of democracy, both economic and political, have long been under consideration by American political scientists. Indeed, in all probability we overemphasized them. Yet there was enough to give us pause. To illustrate, what must Montesquieu (now, of course, looking down from the battlements of heaven upon this assemblage) think of his American children? With approbation, to be sure, in so far as we accepted his limited principle of separation of powers, of check and balance. With apprehension, certainly, because of the extremes to which we have carried that principle. For not only did we incorporate it in our federal government; we employed it also in state and municipal governments, to such an extent indeed that often the boss and his machine became necessary to make the latter loose-jointed structures work. Our federal system introduced another area of friction; today forty-eight state governments check and balance the national government. In party politics alone have we shown a measure of restraint; at least we avoided the multi-party systems formerly characteristic of continental Europe.

<sup>6</sup> *The Prince*, ch. xviii. The good qualities referred to are mercy, faithfulness, humane feeling, uprightness, and religion.

Taking American political structures as a whole, it is not at all strange that they operate with "celerity contempered by cunctation," as Governor Pennypacker quaintly phrased it, emphasis normally being placed on "cunctation" rather than on "celerity."

In the economic and social life of the country, a development roughly similar to that of separation of powers, check and balance, has been carried to an even greater extreme. Although class antagonism, class struggle, have been phrases of ill-repute among us, Madison frankly recognized their existence in the pages of *The Federalist*.<sup>7</sup> That they have persisted ever since, sometimes flaring up in outbreaks of violence, every reader of American history is aware. Regional differences have always been with us. Regions themselves are more numerous than most of us are inclined to admit.<sup>8</sup> Racial antagonisms also persist. Abolition of the privilege of slavery cost us a devastating civil war. But the Negro problem survived abolition, bringing forth the black disgrace of lynching which, fortunately, now seems to be disappearing. What Madison called the "moneyed" interest has possessed a high degree of cohesiveness from the start; nevertheless it found itself in a minority politically in 1932, 1936, and 1940. The increasingly sharp confrontation between "haves" and "have nots" which characterized the campaigns of these years is far from being resolved. Recently the forces of organized labor have permitted themselves resort to every measure short of war—civil war, that is—as between the American Federation of Labor and the Congress of Industrial Organizations. Of religious sects, the country boasts some two hundred and thirteen sufficiently large to be counted for census purposes, to say nothing of innumerable sectlets as noisy as they are insignificant. With the intent, not of building a Tower of Babel, but rather of acquiring canals, railroads, and skyscrapers as rapidly as possible, we held our doors open to floods of immigrants from their first coming more than a century ago to the passage of the quota acts of the 1920's.

<sup>7</sup> "The most common and durable source of factions has been the various and unequal distribution of property. . . . A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views." *The Federalist*, No. X (Nov. 23, 1787).

<sup>8</sup> According to an eminent economic geographer, the continent has no fewer than forty-five "economic, or human-use, regions," of which all except seven are wholly or partly under the sovereignty of the United States. Some of these regions are larger than Germany, some as small as Belgium. Cf. J. Russell Smith and M. Ogden Phillips, *North America: Its People and Resources* (1940 ed.)

The canals, railroads, and skyscrapers were delivered promptly, but during the First World War disloyal activities carried on by minorities among the foreign-born embarrassed us seriously. Thanks to Herr Hitler's numerous and breath-taking improvements in the fine art of Fifth Columnism, we are likely to be much more seriously embarrassed by similar alien activities if we are drawn into the present conflict. Today Communists and Bundists, few in number but potent in capacities for mischief, attempt to stir up dissension among us in the hope that it may redound to the benefit of their respective fatherlands. Closely related to this difficulty, the last decade has been prolific of demagogues: Huey Long, Father Coughlin, Grandfather Townsend, and innumerable lesser figures of that ilk.

As if check and balance between groups, political, economic, and social, were not enough, we must cope also with the whimsies and aberrations of some fifty million voters, each a "sovereign." Many of our "sovereigns" are politically illiterate, but they are none the less cocksure on public issues because of their lack of information. Among this element, propaganda frequently makes intoxicated lions out of meek guinea-pigs. Nearly all our "sovereigns" are largely engrossed with their private interests; paraphrasing Shaw's bitter aphorism, we may say that to them, food, clothing, sex, and other forms of recreation come first; religion is a remote second; the interests of organized society as a whole are nowhere. Considering these innumerable divisions and antagonisms of American life, it is evident that while in practice our national motto, *E Pluribus Unum*, leaves much to be desired so far as "*Unum*" is concerned, it is wildly exaggerated on the side of "*Pluribus*."

Contrasted with streamlined dictatorships—especially streamlined on the military side—how inchoate, contradictory, and soft our American democracy appears to be! To build a military machine out of such disparate materials is a task comparable to the building of a new firmament over the earth. Yet such a machine was built, first in 1860 and again in 1917: if need be, it can be built again. From a civilian angle, no matter how great the conflicts in our American life, that life is the *milieu* from which we sprang; it is the basic material upon which we as political scientists must work professionally. Let us give thanks that while it has the defects of its qualities, these same qualities are of priceless value. Nowhere upon earth is there so great a reservoir of individual energy, of

individual skill. Instead of one *Führer* surrounded by a small coterie of "big shots," we have scores of thousands of leaders, great and small, in every line of human adventure. Nowhere upon earth is there so great a reservoir of good will, of belief in progress, of hope for the future. With all its defects, America possesses both the energy and the idealism which may bring forth a life worthy of free men, upon which may be erected a truly great civilization. Even if totalitarianism conquers the world, it can offer humanity nothing more than the rule of force, with hundreds of millions of men reduced to slavery, with civilization dying of paralysis as the wills of individuals are broken and subjugated to the sway of the omnipotent state.

As noted above, the second marked consequence of the events of 1940 has been a considerably enhanced estimate of the strength of dictatorships. It would be fatal to underestimate that strength. We are not likely to do so now; it would be far better with us if we had recognized it earlier, as did President Franklin D. Roosevelt in his Quarantine speech at Chicago on October 5, 1937. On the other hand, perhaps we rate too highly certain phases of the power of Hitler, Mussolini, and their confederates. Thus, in the case of the *Führer's* power, it is clearly based upon the rigid subjection for seven years of all German interests to the sole end of military might. Immense exactions were demanded of the people in achieving this end; the broad liberties granted them by the Weimar Constitution were ruthlessly destroyed; propaganda and terror became major instruments of policy. Worst of all, fiendish injustices were practised against Jews, Socialists, Liberals, Democrats, pacifists, and others. Nevertheless, the end—the creation of stark overwhelming and military power—was attained, power sufficient not only to wipe out half a dozen small neighbor nations but also to overwhelm France in a campaign of forty-three days. Candor compels the recognition that behind Nazi Germany's conquests there were other motives of slightly higher character than mere lust for power and booty. Certain elements of the population were moved by nationalist feeling; others by belief in some sort of "world revolution." Nothing succeeds like success, a maxim particularly true of military success. Victory so far has no doubt strengthened Hitler's popular following, adding for the time being to the number of those who support him voluntarily or only *der Noth gehorchend, nicht dem eig'nen Trieb*. Whatever the motives of the "heiling" con-

tingent, the fact remains that a colossus has been erected so mighty that it threatens to bestride the narrow world. Now it is of the nature of such power that it cannot be reasoned with; appeasement merely whets its appetite for more. There is only *one* answer to it, the answer given during the First World War by a former President of this Association, then President of the United States, in ringing words that may soon become our rallying-cry again:

"Germany has once more said that force, and force alone, shall decide whether Justice and Peace shall reign in the affairs of men, whether Right as America conceives it, or Dominion as she conceives it, shall determine the Destinies of Mankind. There is, therefore, but one response possible from us: Force, Force to the utmost, Force without stint or limit, the righteous and triumphant Force which shall make Right the law of the World, and cast every selfish dominion down in the dust."<sup>9</sup>

# V

Prudence dictates, however, that for the time being we must direct our attention to the strength of dictatorship rather than to its weaknesses. Not until Hitler and his associates have been overthrown will this consideration lose its force. On the other hand, it is worth while even now to examine some of the defects of the dictatorial establishments. Powerful as they appear to be militarily, there are, of course, limits to that power. To regard Nazi Germany, for example, as both omnipotent and invulnerable is to be guilty of gross error, an error that can lead only to defeatism on our part. Further, we must recognize clearly that there are dictatorships and dictatorships. Of the lot, Hitler's Germany alone gives the impression of any real vision, determination, and fighting spirit; there is something of the leonine as well as of the lupine about it. In the international menagerie, Russia and Italy are jackals, second and third class jackals at that. If the *Führer* wins the present war, both are doomed to become his vassals. As for Italian soldiers, the chief distinction which they won during the First World War was that of being champion long-distance runners—witness Caporetto. Three years ago they renewed their claim to this distinction at Guadalajara in Spain; and only last month in Greece, although hampered by snow and mud on mountain roads, they nevertheless displayed conspicuous celerity in reaching—and distancing—their

<sup>9</sup> Liberty Loan Address by Woodrow Wilson, Baltimore, Md., Apr. 6, 1918.

rear-guard outposts. It is quite in keeping with the national character, therefore, that the Italian navy should have been built for speed above all else. On the other hand, Russian soldiers once knew how to fight. Napoleon Bonaparte found that out; they proved it in the Crimean War, and again during the First World War. Since September of last year, however, they have been engaged largely in mopping up the crumbs that fell from the *Führer's* table. In the disastrous, even if finally successful, campaign waged against diminutive Finland, the Red Army exhibited a stupidity, inefficiency, and lack of spirit that reflect discredit upon the whole Communist régime. No one doubts now—probably not even Joseph Stalin himself—that in the event of a Nazi victory in the west the Russian bear will soon become Hitler's meat. As for the ambitious and somewhat conceited Japanese, they are lucky in their geographical isolation, also in the fact that those who might set a limit to their designs are busy elsewhere for the time being. Even so, with their resources strained to the utmost after three years of frantic effort, they have not been lucky enough to overcome the vast inchoate Chinese people.

Various conclusions may be drawn from the foregoing. First, Hitler is the keystone of the arch of despotism. If Germany had remained under the Weimar Constitution, it is not unlikely that both Mussolini and Stalin would have been on their way out long before this. Even now, were Hitlerism to be overthrown, it is probable that they would soon cease to be menaces of any real consequence. The same is true of Japan, which turned totalitarian last July—as if that could increase its capacity for mischief. Second although morally as guilty as Germany and many times more contemptible, both Russia and Italy are accomplices, not the principal, in the present assault upon Western civilization. Hence, as opportunity offers, every effort should be made, every possible bribe be offered, to detach them from their alliance with Hitler. Recent events indicate that Italy in particular may soon be softened up sufficiently by bombing raids to induce her to betray the Axis—that famous "band of steal." Third, since Nazi Germany is the sole really effective totalitarian state, its overthrow should be the one great desideratum of democratic world politics. Nothing should be allowed to obscure that end. It was the tragic, nay criminal, blunder of Neville Chamberlain that he did not perceive this fact, that he believed in the possibility of gaining concessions from the

insatiable Hitler by a policy of appeasement. For Britain, the consequences of this blunder have been tragic beyond all reckoning. Fortunately, in Winston Churchill a prime minister has been found who knows how to keep his eye on the ball. Let us hope that the President of the United States will follow his example. Incredible as it may seem under such conditions, there are still said to be some appeasers on this side of the Atlantic, gentlemen willing to make a neat little loan—five billion dollars is the figure most frequently mentioned—to Germany as soon as her victory over Europe is complete. This, it is assumed, will soften any ill-feeling Hitler might cherish against us because of our earlier mistaken sympathies for the Allies. Also, poor fellow, he would need the money to buy our goods wherewith to repair the ravages of war and to feed the starving German people. Of course, once the loan were made, we would be too polite to inquire how much of it was spent, not for butter but for guns, the latter to be used against the United States. If political scientists cannot scotch so obviously ruinous a policy, one may well despair of the future of our profession. What is far worse, one would have to despair of the future of free government.

The essential characteristic of totalitarian policy, then, is to subordinate everything to the creation of maximum military power. Behind the imposing façade of armed might which they are thus able to exhibit to the outside world there are abundant evidences of decay and disintegration. Taking Nazi Germany as distinctly the best organized of these régimes, the assertion is widely heralded by Dr. Goebbels and his propaganda machine that every worker in that country has a job. With their free trade unions smashed, these workers not only have jobs; they also have the privilege of working longer hours at lower real wages than ever before. A large proportion of them are engaged in making munitions; many others have been drafted for forced labor and for military service. As a result of these conditions, food production has fallen off sharply within the Third Reich; meanwhile the British navy has clamped down hard on shipments from overseas. Except for soldiers and party workers, under-nourishment is universal; the diseases that follow in its wake are rapidly gaining ground and output per worker has reached new lows. Latterly, the semi-famine conditions endured by the German laboring class have been made bearable only by the theft of food from conquered territories; a large-scale slaughter of cattle and poultry is going on in



Denmark, Norway, and the Low Countries. The German army and party members must be fed well; German workers may fare somewhat better than the serfs imported from Poland and Czechoslovakia, but otherwise stark famine impends throughout the "New Europe" that Hitler is so hastily throwing together.

Of course, as we all know—having been told it so many times by *Facts In Review*—the Nazis are terribly efficient. "Terribly" is the right word in this connection, no one can doubt it; but one must doubt whether efficiency of their sort has any real foundation or can be kept up for any considerable period of time without constantly repeated conquests. What they are now practising, as the Germans themselves used to say in an earlier and saner day, is simply *Raubbau*—that is, an economy that grasps at the largest immediate returns, meanwhile destroying future sources of production.<sup>10</sup> Germany's show of overwhelming military might rests, therefore, upon a rotten foundation. If her forces in the field should receive a single serious set-back, it is probable that the whole crazy jerry-built structure at home would begin to disintegrate. The ensuing débâcle is likely to be far more rapid and complete than at the end of the First World War. All of which emphasizes the duty resting upon us to aid to the utmost in the final thrust that will send Hitlerism crashing to ruin.

## VI

Whatever may be said as to its genesis, background, or probable duration, the existence of superior military power, here and now, is a large and massive fact. To refer to it scornfully as mere physical strength, pure brute force, is futile. For it may be set down as one of the oldest truisms of politics that superior physical force, ruthlessly wielded, overcomes, for the time being at least, all opposition, whether by physical or other forces, or by both of these combined. The careers of the great conquerors of history—of Alexander, of Julius Caesar, of Attila, of Genghis Khan, of Tamerlane, of Napoleon Bonaparte—illustrate this truism. Somewhat quizzically, Rousseau stated it as follows: "To yield to force is an act of necessity, not of will—at the most, an act of prudence. . . . 'Obey the powers that be.' If this means yield to force, it is a good pre-

<sup>10</sup> As Peter F. Drucker trenchantly put it, the aim of Nazi economic policy was "to convert the enormous German inferiority in man power and resources into at least temporary superiority." See his article, "War Against the Middle Classes" in the *Saturday Evening Post*, Aug. 10, 1940.

cept, but superfluous: I can answer for its never being violated."<sup>11</sup>

Superfluous the precept may be, as Rousseau declared. In carrying it further, one runs the risk of being accused of "elucidating the obvious." Even that risk is justified, however, when, after abundant elucidation, large numbers of otherwise intelligent persons refuse to take the steps made inescapable by that which is demonstrably obvious. Turning to a consideration of the situation which confronts us, it makes no difference for the time being—although it may in the long run—that the chief wielder of superior physical force is fanatical, criminal, even contemptible, in most of his personal qualities. In all these respects he resembles other conquerors, who, like all large-scale butchers, have been of distinctly sub-human type. Further, it makes no difference for the time being if the form of government or the type of social system for which the wielder of superior power fights is abhorrent morally, repugnant to deep human instincts, and diametrically opposed to the long-run interests of the race. Like the highwayman, he has the gun and the drop on his victim. The latter may count himself lucky if he is allowed to hand over his purse and to escape with anything less than the loss of his life.

It is not meant to be implied that Herr Hitler is a highwayman, nothing more. Even if that were his proper and exclusive rating, however, with superior physical force at his disposal, he would have been able to overcome the seven small and one great neighbor nations now at his mercy. The fact that other than purely military elements contributed to his victories, such as German science and technology, centralized administration, the one-party system, propaganda, terror, and the famous Nazi ideology, makes him an even greater menace to civilization.

Conversely, no matter what the virtues and advantages of a free and peaceful nation—wealth, high standards of living, general diffusion of intelligence, respect for human rights—it must go down before superior physical force, ruthlessly wielded. To several of the nations so far overthrown by Nazi invaders, for example, especially to Austria, Czechoslovakia, Denmark, Norway, Belgium, Holland, and France, most of us would unhesitatingly have as-

<sup>11</sup> *Social Contract*, ch. III. Rousseau continues as follows: "As soon as it is possible to disobey [such power] with impunity, disobedience is legitimate; and the strongest being always in the right, the only thing that matters is to act so as to become the strongest."

signed a higher cultural rating than to the Third Reich. With the exception of France, they were small; moreover, all of these small countries except Czechoslovakia were desperately afraid and hence unwilling to enter into defensive alliances until it was too late. Britain still stands firm, but it is not her democracy, her liberty, her respect for law and justice, that protect her; it is the British navy and air force. If we have so far remained unscathed, let us not attribute that good fortune to our free government, to our wealth, our intelligence and our civic virtues. Germany, Italy, and Japan are far away, although, paraphrasing Max Lerner, not so far as you think. Also the *Führer*, the *Duce*, and Prince Konoye are excessively busy for the time being in their own neighborhoods.

No; there is only one way open to a nation which may still have to confront a hostile *force majeure*, namely, to create a still greater force wherewith to overwhelm the aggressor. If that is not our situation today, it may well become our situation tomorrow. Only a decisive British victory and the complete overthrow of Hitler can save us from such a necessity. A stalemate in Europe will not suffice; at best, it could give us only a further breathing spell. If Britain falls, we stand alone against a possible, nay almost a certain, combination of aggressive dictator powers, flushed with victory, replete with the spoils of conquest.

In the latter event, Germany, Italy, and Japan may require some time to bind up their wounds, to organize the slave governments and the slave populations of the countries which have fallen into their hands, before they will be able to make the necessary preparation for a descent upon America. If so, we should know how to utilize the interval accorded us. The major effort of our government and people must be concentrated upon mass production of armament for warfare on land and sea and in the air. If we succeed in that effort, the dictator countries will moderate their threats and reconsider the economic demands upon us which they are now supposed to be meditating; they may even abstain from any direct action against the Monroe Doctrine. So far, wisely or not, we have kept out of the war in Europe; but only by the creation of an armed power sufficient to make attack upon us downright foolhardy can we keep war out of the Americas. In the meantime, let us give Britain—the first line of defense for our democracy—every possible aid. Above all things, let us give whatever is needed to defeat Hitler *promptly*. To be too late with our aid would be an irrepar-

able, perhaps a fatal, blunder. Political scientists must be realists. As such, we know that if Britain is crushed, the only kind of peace we can hope for will be an armed peace—and that probably of short duration.

It may be that, in spite of all our efforts to increase our military strength, Germany and Italy, perhaps with the aid of Japan, may think the gamble of an attack upon the Western Hemisphere worth trying. Certainly the loot of the Americas which they could divide among themselves in case of victory would be a magnificent incentive. If there is to be such an attack upon us, it is manifest that a policy of super-armament is the only alternative to abject surrender.

Combined attack by dictator powers upon America may result in our defeat or in our victory. In the former event, democracy will be dead upon this planet for a period of unpredictable length. Even so, let us hope that we might inflict wounds upon despotic aggressors from which they would not soon recover. This is not set down in malice; rather it would appear to be the only hope of future resurrection for our political principles. If democracy fighting for its life proves to be spineless and cowardly, why should any future generation wish to revive it? On the other hand, if it goes down fighting gloriously to the last ditch, it will not lose the power to fire the hearts of some future generation. Once more, as at the end of the eighteenth century, a race of rebels may be born of the sons of men.

## VII

Given sufficient armament and as good a fight as our cause warrants, the result may be a victory. In that event—the happiest we can envisage—democracy will be safe in its last citadel, the United States. Still we could not afford to disarm so long as despotism remained dominant in other continents. It would still be a question of “we or they,” as Hamilton F. Armstrong expressed it, with the possibility that the struggle might be renewed at any time. A future so shadowed in its brightest aspect does not permit us to maintain the happy-go-lucky, tolerant attitude of the past; rather, we should adopt Voltaire’s famous battle cry, *écrasez l’infame*, for our device. In this respect the dictatorships have been far more consistent than the democracies. Never for a moment have Herr Hitler and Signor Mussolini concealed their determination to wipe out democracy, root and branch. Lesser Nazis and Fascists have poured forth a

constant stream of insult in the billingsgate which reveals their scurrilous mentality. They shriek *ad infinitum*, *ad nauseam*, that democracy is "bankrupt," "decadent," "plutocratic," "Jewish," a "fake," a "fraud," the "foul and filthy avenue to Communism," a "used-up system," a "has-been, selfish plutocratism," an "old worn-out slut."<sup>12</sup> We need not retort in kind, but we must coldly resolve to work unceasingly for the destruction of the whole vile totalitarian establishment. No doubt that will come to pass in the fullness of time, but it will be achieved much sooner if democrats everywhere organize and fight against all contemporary absolutisms. Meanwhile they may comfort themselves with the historic remark of a famous British statesman who, after listening to an opponent present his plan, said succinctly: "Sir, hell itself cannot be administered upon principles such as yours."

From the *Führer's* point of view, however, he is thoroughly justified in his attitude toward free government: so long as a single great democratic power survives, he cannot rest secure in his conquests. It is high time that we apply a similar logic to our own situation. Let us recognize the fact that so long as any great power remains despotic, we shall never have real peace but only an armed peace. Our policy must therefore be frank and determined opposition to all dictatorships everywhere: in war, we must give them two blows to their one until they have had enough; in peace, we must employ against them every policy short of war; particularly in economic dealings with them, let us be guided by the old Scotch adage, implicit if not explicit in Adam Smith, "nothing for nothing and damn little for sixpence."

#### VIII

"But, but, my dear sir," rises some anguished Mr. Caspar Milquetoast to object, "do you not know that a democracy which arms itself is doomed to lose its democracy?" The argument, if it can be called such, is constantly used in other connections by honorable gentlemen who know little of history and less about the specific causes of the rise of dictatorship. Thus we were told recently that if the anti-third term tradition broke down, totalitarianism would be our lot immediately and forever. Similar dire predictions are frequently made consequent upon the success of any candidate or policy the orator may happen to dislike. Thus on August 30, 1940, Senator Burton K. Wheeler of Montana, speaking in oppo-

<sup>12</sup> *New Leader*, July 20, 1940.

sition to conscription, rather melodramatically declared: "If you pass this bill, you slit the throat of the last democracy still living; you accord to Hitler his greatest and cheapest victory to date. On the headstone of American democracy he will inscribe—'Here lies the foremost victim of the war of nerves.'"<sup>13</sup>

In its most general aspect, the assertion under consideration may be stated as follows: "If you do this, democracy is doomed." It is then simply a species of that famous, and dubious, genus: "History teaches us thus and so." Any such prophecy regarding the early demise of democracy may be approached from two angles. If, first, it be presented simply as a generalization, allegedly based upon history, the facts of all recorded time would have to be searched, equal consideration given to those instances supporting it and to those conflicting with it. As a matter of logic, discovery of one or more instances of the latter sort would knock any such generalization into a cocked hat.

Second, the assertion may be made simply as a prediction, partly resting upon historical citation, but more largely based upon new conditions, at present prevalent, which are deemed certain to bring about its fulfillment. Now the statement that "war or preparation for war at the present time means the downfall of democracy" is obviously of this character. Since its historical support is weak, those who make it are obligated to point out convincingly the new conditions (perhaps changes in political organization, in the economic system, or in the art of warfare), which may make it come true nevertheless. This they never do; *ipse dixit* is more to their taste. As a matter of fact, they cannot do it; at best, they can only establish some degree of probability. Together with the rest of us, these would-be prophets must wait for the verdict of events to learn how much or how little of their prophecy was true.

Yet, in spite of these obvious reasons for caution, glib politicians

<sup>13</sup> A statement given out by Mr. Wendell L. Willkie on August 29 last is of the same character, but it deftly avoids the verbal pyrotechnics of Senator Wheeler. The passage in point is as follows: "The 'conscription of wealth' is a phrase without meaning. In event of emergency, the industries and assets of this country are at the disposal of the people. Let us not create that emergency before it actually exists by setting up a potential dictatorship." Using the same assertion in his campaign speech at Akron, Ohio, September 5 last, Mr. Norman Thomas at least deserves credit for setting a more or less definite time limit for the period of democracy's obscuration, viz.: "Let us get involved in war, and democracy's last chance to develop in orderly fashion and learn to solve its own problems will be gone, not to return in our generation or our children's."

constantly rush into print predicting the downfall of democracy on all sorts of grounds. Of course such assertions are not argument; rather they serve to conceal the absence of argument, which is made up for by an appeal to popular anxiety. The latter will be recognized as a rather commonplace propagandist device—one, by the way, in which Herr Hitler has proved himself the world's greatest expert.<sup>14</sup>

Clearly, therefore, assertions that "democracy is doomed if . . ." will not stand analysis; indeed they are much too "iffy" to stand up under criticism. Nevertheless, their constant repetition contributes to defeatism, and in time of crisis may prove disastrous. Political scientists, and historians as well, should prepare themselves to challenge these lightly-made prophecies of destruction. In particular, demagogical orators who predict the downfall of democracy if it goes to war, or even if it introduces conscription, should be brought to book publicly as to their actual knowledge of the causes of totalitarianism. A few exposures of this sort should discourage senators and other honorable gentlemen who raise a bogey in order to conceal their ignorance.

Let us for a moment consider the assertion that democracy and war are incompatible. As a generalization drawn from history, there is precious little support for it; indeed, numerous instances to the contrary may be cited. Since the Conquest of 1066, Britain has engaged in innumerable wars; nevertheless it became "a land of settled government, . . . Where Freedom slowly broadens down from precedent to precedent." From the foundation of their federation in 1291 to the end of the Napoleonic struggle, the Swiss fought almost continuously, both in foreign and in civil wars, yet they developed the purest democracy the world has ever known.<sup>15</sup> In our own history, the Revolutionary War ushered out monarchy and opened the way for a federal republic. Nor did the Civil War permanently weaken the democratic principle in the United States; on the contrary, it set free nearly four million slaves. Following our participation in the First World War, the chief impulse of the American people, expressed by the Hardingesque slogan, "Back to Normalcy," was applied not only in domestic affairs, where it

<sup>14</sup> See *Propaganda Analysis*, Vol. III, No. 10 (Aug. 1, 1940).

<sup>15</sup> The Swiss federal constitution of 1848 provides that "every Swiss is bound to perform military service." Several referendum votes have sustained and strengthened this provision. Thus the present high degree of preparedness of the little Alpine Republic rests upon the most democratic of bases.

worked with some success for the time being, but also, tragically enough, in our foreign relations, where it kept us out of the League of Nations, thus laying the foundation for all the woes that now afflict the world.

In the light of history, then, the assertion that any democracy engaging in war must forfeit its democratic institutions is far from convincing. In particular, it leaves out of account the effect of victory or defeat. One would be safer in asserting that a government of any type which leads its people to a military débâcle is due for drastic overhauling. This, however, is as true of authoritarian as of democratic governments. Defeat of France in 1870 resulted in the overthrow of Napoleon the Little and the establishment of the Third Republic. Defeat of Hohenzollern Germany in the First World War led to the establishment of the Weimar Republic; defeat of Austria and Russia, to the overthrow of the Hapsburg and Romanoff dynasties. If Germany and Italy find themselves on the losing side at the end of the present war, it is altogether likely that Hitler and Mussolini will become dictators in exile—that is, assuming that they are lucky enough to escape with their lives. Totalitarian governments as well as democracies, therefore, run risks when they engage in war. Indeed, the risks of the former are greater, for with one severe military setback all latent internal strains and stresses make themselves apparent. Democracies, slow to wrath and slow to arm themselves, nevertheless go to war on the basis of a stern mass determination, and should therefore develop greater staying power. It may be conceded that a self-governing people which decides to take this fateful step must temporarily centralize power, make heavy sacrifices, submit to sterner discipline. To assert that these measures mean the complete destruction of democratic institutions, that they mean the advent of fascism,<sup>16</sup> is absurd. Indeed, if supported enthusiastically and steadfastly, as in Great Britain at present, by the popular will, by sacrifice and discipline—that is, by self-sacrifice and self-discipline—they deserve to be ranked among the finest manifestations of the democratic spirit.

Overlooking its lack of historic verification, let us nevertheless assume for the moment that the assertion under consideration is true. To make the assumption specific, to bring it as closely home

<sup>16</sup> It will be recalled that during the First World War the corresponding term was "Prussianization."



as possible, we may express it as follows: The United States goes to war as a democracy; in consequence, it suffers the immediate and complete loss of its democratic liberties. Still the words "immediate and complete" may be queried. Great Britain, for example, has now been at grips desperately with the greatest military menace in its history for more than fifteen months. Far-reaching controls over persons and property have been enacted by the regular processes of legislation. Some hundreds of leading fascist agitators have been withdrawn from the public advocacy of anti-British and pro-foreign doctrines, it is true, but Parliament still sits; after full debate therein, ministerial change is possible and one has already been made; pacifists are still allowed to make public protests, and, believe it or not, the London *Daily Worker* is still being printed. Whatever the future may hold forth, it is patently absurd to say that democratic institutions have been abandoned by the British. Certainly the country has not gone fascist to an extent even remotely approximating Nazi Germany, where press and radio are controlled to the last word by oleaginous Dr. Goebbels, where the subservient Reichstag seldom meets, and then only to function as a sounding board for one of Herr Hitler's speeches.

## IX

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But let us make still another concession to the assertion under consideration. Grant that the United States, a democracy, goes to war; grant, further, that in consequence it loses its democratic character immediately and completely, becoming a full-fledged fascist state. Such a development, as the case of Britain indicates, is highly unlikely. Even if it were to take place, however, *one might still vastly prefer to live under a totalitarianism of our own and dominated by an American than to fall a prey, as France has done, to the German Führer and his type of fascism*, with its merciless soldiery, its brown and black shirts, its Gestapo, its concentration camps, its torturers and sadists. If war comes, we should strive for a clear-cut victory won by a democratic American government. Personally, however, I should consider a victory won by a highly centralized, even by an American fascist, government if you please, as infinitely more desirable than a defeat at the hands of a foreign fascist despotism. (If this be treason, make the most of it.) Bowing ourselves to the yoke for a given purpose—the winning of the war—we might the more easily throw it off when that end had been

achieved. It is true that revolt is more difficult now than at the end of the eighteenth, or even at the end of the nineteenth, century. To "descend into the street," as the French used to phrase it, and to build barricades would be suicidal in an age of tanks, flame-throwers, and dive-bombers. Still there are joints in the armor of fascism. With time, new joints may appear. Unbridled power corrupts those who seek to wield it; luxury enfeebles those who would batten upon the fruits produced by millions of servile workers. In the end, we may trust the resourceful American people to find a way to overthrow an American dictator and to return as far as possible to the principles of the Founding Fathers of 1787.

Neither history nor the theory of probability, then, yields any appreciable support to the allegation that democracy and military preparedness are incompatible. It is not only false, it is also viciously defeatist. Wittingly or unwittingly, those who parrot it on any and all occasions give the impression that the survival value of democracies in such a wicked, wicked world as that of Anno Domini 1940 is slight indeed; we are told that like shrinking violets these democracies must perish with the first blast of the wintry wind of militarism. Assuming that free nations acted upon this pseudo-principle, giving assurance in advance to predatory dictatorships that under no circumstances would they risk their liberties by arming and fighting to preserve them, there can be slight doubt as to the result. They would be occupied militarily as soon as the *Führer* and his associates found it convenient, thereafter to be exploited under alien totalitarian control indefinitely. Prior to 1939, something could have been said in favor of pacifism and appeasement; after that date, all but the dullest coupled appeasement with preparedness. Now both pacifism and appeasement are thoroughly bankrupt policies. Even the old adage that "it takes two to make a quarrel" is hopelessly outmoded. Herr Hitler *solus* has demonstrated transcendent genius in picking innumerable quarrels on any grounds or no grounds at all; also in starting wars utterly without provocation against absolutely peaceful neighbor nations: witness the fate in the course of the present year of Denmark, Norway, Belgium, and Holland. Clearly, then, the acceptance of the assertion stated above would disarm democracy to avoid the possible fate of domestic fascism, only to subject it to a certain and far worse fate, the imposition of fascism by an invading alien power.

## X

It is no part of the purpose of this address to present a complete program for future action. That market is overstocked: during 1940 we were surfeited with platforms drafted by the two major and by several minor parties, none of which became a best seller. There are, however, a few proposals, often neglected in public discussion, to which I should like to invite your attention. First of all, we must accept the statement made by Professor Fritz Morstein Marx that "our policy cannot survive under the disastrous load of chronic unemployment and sharply marked economic inequalities."<sup>17</sup> Undoubtedly, chronic unemployment is the sorest point of contrast between ourselves and the dictatorships. Although the methods of the latter in dealing with labor are those of the slave-driver, nevertheless they have succeeded in putting everybody, except those blacklisted for political reasons, back to work. We must achieve the same result, and do it through the use of better means. It is to be regretted that neither of our major parties found space in its platform this year for a plank proposing an amendment to the Constitution whereby every adult citizen would be guaranteed employment at living wages. Paraphrasing Lincoln, what we intend is "to declare the right, so that the enforcement of it may follow as fast as circumstances permit."<sup>18</sup> With this obligation imbedded in our fundamental law, methods of enforcement could be worked out as between federal, state, and local governments on the one hand and private employers on the other. A national commission composed of the most eminent political scientists, economists, educators, business men, and labor leaders should be appointed to supervise the process. Admitting the enormous cost involved, also the tremendous difficulties of detailed legislation and administration, still the thing must be done. Otherwise, how can we draft men to fight for their country many of whom have never had a job, many of whom must fear that they will not be able to find work after they have been mustered out of service? What a ghastly incongruity that those who are asked to risk their lives to save the government should not be guaranteed by that government so much as a chance to make a living in case they escape death on the field of battle! Recalling its past achievements,

<sup>17</sup> Fritz Morstein Marx, "Totalitarian Politics," *Proceedings of the American Philosophical Society*, Vol. LXXXII, No. 1 (1940).

<sup>18</sup> Speech at Springfield, Illinois, June 26, 1857.

democracy is more than justified in calling upon its sons to fight for it. We believe, however, that by far the greater achievements of democracy belong to the future, first and foremost among them the solution of the problem of unemployment. Let us then call upon the future, as well as upon the past, achievements of democracy in arming our soldiers spiritually for their final struggle against despotism.<sup>19</sup>

# XI

Second, one must fight the devil with fire. Although the adage is scarcely in accord with the strictest principles of morality, warrant may be found for it in the pages of Sir (and Saint) Thomas More's *Utopia*.<sup>20</sup> As the world of 1940 learned to its sorrow, totalitarian states have not hesitated to subsidize murder, treason, sabotage, arson, and bribery in the countries they intend to attack. It is too much to expect that they will spare us similar inflictions in case our relations with them become more strained. If so, there should be no squeamishness on our part about replying in kind. In all the dictatorships, and now probably also in the countries they have reduced to slavery, widespread and determined underground organizations exist. Little as these organizations have been able to accomplish so far, they are obviously ready to take advantage desperately of any opportunity to strike at the governments under which their members are hunted as wild beasts. Once provided with adequate funds, they should be able to do far more destructive work than the disloyal elements in our midst. Think what Otto Strasser might have accomplished with a paltry hundred thousand

<sup>19</sup> As a small and rather ineffective move in the direction proposed, it is interesting to note that the Burke-Wadsworth Selective Training and Service Act of 1940 attempts to provide guarantees that private business enterprises shall hold jobs open for employees who are called to the colors. Veteran preference in our civil service laws is another microscopic effort of the same sort.

<sup>20</sup> More writes in Book II of the *Utopia*: "As soon as they [the Utopians] declare war, they take care to have a great many schedules, that are sealed with their common seal, affixed in the most conspicuous places of their enemies' country. . . . In these they promise great rewards to such as shall kill the prince, and lesser in proportion to such as shall kill any other persons, who are those on whom, next to the prince himself, they cast the chief balance of the war." More also suggests the offering of rewards to enemy princes and their subordinates to act against their own countrymen. If these methods prove unsuccessful, the Utopians "sow seeds of contention among their enemies, and animate the Prince's brother, or some of the nobility, to aspire to the crown." The writer confesses that the above "utopian" advice nauseated him when he first read it. Totalitarian methods of warfare have convinced him, however, that it must be followed until civilization has been reestablished.

dollars or so! Even with the barest minimum of financial support, he kept the Gestapo in a state of perpetual jitters for a decade. Discreet use of part of our secret service funds—and that means no unnecessary publicity about details—might serve to bring about revolt inside the Third Reich considerably earlier than it would come otherwise. At any rate, the results would afford Herr Hitler an opportunity to reflect upon another adage—that with regard to the biter being bitten.

## XII

The foregoing must not be interpreted as advocating atrocities—let the dictators have a monopoly of that sort of thing. Even in dealing with Fifth Columnists interned "for the duration," humane treatment should be insisted upon. Perhaps, however, one exception might be made in their case. If it be not cruel and unusual punishment under Article VIII of the Constitution, they should be compelled to listen to three hours of lectures daily—only the usual stint for undergraduates—delivered by eminent American college professors on the general subject: "Advantages of Democracy over Dictatorship." Minor matters of this sort aside, chivalry is out of the question if we must go to war against any of the totalitarian powers. The British have learned that lesson. Winston Churchill's decision to take over the French navy by force was indeed a bitter one to make, but it was clearly justified under the circumstances. The anguished squeals which followed immediately from Berlin and Rome were proof of it. Beyond all doubt, Herr Hitler, who has never let earlier pledges stand in the way of anything he wanted to do later, would have seized the French fleet for use in the invasion of Britain. How agonizing it must have been for him and for Signor Mussolini to learn that the British also knew how to "get rough"!

This address could not pass as authentic if it failed to import a large number of significant precedents from Switzerland. Of course the general assumption behind these importations is that whatever is Swiss must be genuinely democratic, also wise and practical. In the earlier years of the last decade, separate cantons of the little Republic of the Alps began to take action against the Communist party, suppressing its publications and deporting aliens connected with it. Federal legislation of a similar character began in 1932 with a *Bundesratsbeschluss* forbidding appointment to or continuance in the public service of members of the Communist party or of organizations affiliated with it. Meanwhile, Nazi organizations

similar to our own *Bunds* had endeavored to find rootage in Swiss soil, not very successfully to be sure. To counter their activities, the wearing of party uniforms and badges was forbidden in 1933, thus antedating the passage of the British Public Order Act by more than three years. Activities initiated anywhere in Switzerland to the advantage of any foreign state or party, and to the disadvantage of the country, were prohibited in 1935. Beginning a year later, propaganda, foreign or domestic, of communistic, anarchistic, anti-military, or anti-religious character was ordered suppressed. In 1938, to these forbidden types was added propaganda designed to disturb the internal or external security of the Federation, especially the independence or neutrality of the country, its democratic institutions or the interests of national defense. Later in the same year, an enactment—perhaps the most significant of the whole series—prohibited public and systematic efforts to cast contempt upon the democratic bases of the Federation or of the cantons, or to stir up hate against groups because of their race, religion, or nationality. At one blow, this *Bundesratsbeschluss* deprived German agents or sympathizers of the privilege of print, at least of printing that part of their creed which stirred up the most trouble locally. Finally, on August 6 of the present year, the Bundesrat comprehensively and categorically prohibited all activity throughout the Federation by the Communist party and its “transmission belts” (*Hilfs-und Nebenorganisationen*), also by anarchistic groups, also by groups affiliated with the Fourth International (*Trotzkyites*), and finally by any groups that might endeavor, presumably under new names, to take the place and carry on the work of the groups specified above. It is noteworthy that the foregoing enactments carried stiff penalties in the form of fines or imprisonment or both, to which, whenever aliens were involved, expulsion from the country was added.<sup>21</sup>

It is not meant to be implied that laws of a similar character should be passed immediately in the United States. We are not in the very center of the European frying pan as are the Swiss, and

<sup>21</sup> *Bundesratsbeschlüsse* of December 2, 1932; May 12, 1933; June 21, 1935; November 3, 1936; December 2, 1937; May 27, 1938; December 5, 1938. Also *Bundesgesetz* of March 26, 1934. As these pages go to press, news comes from Bern that on November 19 of this year the *Bundesrat* dissolved the so-called “*Schweizer Nationalbewegung*.” To all intents and purposes, this “movement” was a true copy of the German National Socialist party which had been attempting to operate on Swiss soil.

perhaps we can afford to be more tolerant. On the other hand, conditions may so change, even here, that it will be necessary to take the wind out of the sails of foreign agents, of shirted agitators, of the "Reverend" Father Coughlin and his like. In time of war or threatened war, especially when subsidized from abroad, they are little less dangerous than armed invaders. To deal with them promptly and effectively is in accordance with the first law of nature—the law of self-preservation. Would that be unconstitutional? Contrary to the sacred principles of freedom of speech, of the press? But these are democratic principles. Is democracy, then, bound to permit enemies within its gates to strike unmolested at its very life? And when democracy dies, what happens to these sacred principles? If the constitutional argument be raised against any future enactments of the Swiss type, let the courts decide. If they decide adversely, the process of amendment may be invoked. Meanwhile, why not ask ourselves what conceivable benefit accrues, even in time of peace, from permitting rabble-rousers, banded together for that purpose and subsidized by foreign powers, to attack our races, nationalities, religious sects, or the basic principles of our political institutions?

Before leaving the subject of Swiss examples for American imitation, a word should be said in favor of the Swiss system of universal compulsory military training. Requiring a minimum of time at the *Rekrutenschule*, it provides a force of 480,000 soldiers ready for active service and an additional 100,000 of trained reserves. With our population, a similar system would provide more than 14,000,000 soldiers ready for all emergencies. Adequately equipped, so large a body of trained men would make armed attack upon the United States hopeless. As a minor detail, if we could divert a quarter of the attention now given baseball to the far more practical and enjoyable Swiss sport of rifle shooting and rifle competitions, probably no dictator would ever dream of leaving his calling card on Uncle Sam's doorstep.

### XIII

It may be objected that the future sketched in this paper—a future of military preparation and perhaps of war—is decidedly dismal. But a far worse future may easily be imagined. Also it might easily be brought down upon our heads. "Appeasement" is the word one reads upon the door to that future; above it the in-

scription: "All hope abandon, ye who enter here." Those who knock thereon, and even those who resisted dictatorship with insufficient force—ten nations in all to the present date—know what that inscription means. It means slavery, dismemberment, expropriation, subjection to alien control, relegation to the position of an inferior race under the heel of a brutal master race, destruction of all human dignity and independence. Worst of all, it means standing aside and remaining mute when fiendish persecution is inflicted upon fellow citizens who happen to be Jews, liberals, or democrats. All this can be had for the asking: we have merely to lay down our arms and shout: "Heil Hitler!"

In the end, it is certain that Americans will not submit tamely to such a fate. They will not enter the door marked "Appeasement": they will go out through the opposite door marked "Defiance." I do not pretend to like the sort of future that confronts us. It may bring with it the heaviest burdens, the most cruel sacrifices. In all probability, things will get worse before they get better. It may fall to the lot of an American President to say, as did Prime Minister Winston Churchill, that he has "nothing to offer but blood, toil, tears, and sweat." Not liking a future, however, is no reason for not facing up to it. There is a deep satisfaction in resoluteness, through all perils, regardless of the outcome. Let us give thanks also that we are done with roseate illusions; that we are ready to deal with grim realities. Peace and justice may not be for our time, but we have the privilege of risking everything that they "shall not perish from the earth."





## A THEORY OF CONSERVATISM

FRANCIS G. WILSON

*University of Illinois*

The conservative of today hardly knows what to conserve. His bargain with destiny seems broken, and instead of consciousness of achievement and contentment with what is, he is more likely to be filled with a sense of frustration. This frustration is an uncertain quantity with which to deal, since it is characteristically explosive and negative. Under its guidance, conservatism may become a driving force to suppress the inconsequential; it may be a force that is forgetful at the same time of fundamental changes that will undermine a way of political existence. The conservative is happiest when he is unconscious of politics, when the essential propositions of social organization do not have to be defended. But the weakness of conservatism appears in not knowing always what are the fundamental propositions supporting its manner of living, and in inability to judge the consequences of political and economic mutation. Conservatism, however, is at least that body of social thought which does not have to be defended.

Conflict, struggle, and protest must be conscious and filled with a sense of purpose. In conflict, there is always the conscious defense of what is presumed to be an interest, and there is an attack on what others deem to be their interest. Likewise, radicalism can never be unconscious or merely habitual, for it is a protest against something that is. But it must not be forgotten that in no state of society have all interests reached an equilibrium which permits of complete coöperation and no struggle. In this sense, conservatism represents a functional value in existence, since the stability of a conservative society is a situation in which the conflict of interests and wills is muted and restricted.

A clear view of the nature of conservatism is difficult to reach because of the changing character of immediate issues. Such issues do not cover the gamut of social experience, and they are changing constantly from one aspect of political or economic contest to another. With each change of issue, or the movement of issues, new alignments of forces are provoked which last only so long as the issue of itself remains as it is. An amorphous word like "liberalism," if traced through the nineteenth century and in different countries, will show an astonishing variety of propositions that have been

called liberal. These propositions extend from the defense of the Church in France, the argument for free trade, the defense of constitutional monarchy in Germany, to pre-Marxian and the Marxian condemnation of poverty under the modern economic system.<sup>1</sup> To what extent is Russia, since the Russian-German pact of August, 1939, conservative or radical? Is the Third Reich really revolutionary, or is it covertly the defender of the bourgeoisie? Can anyone who resorts to revolution, such as General Franco in Spain, be called a conservative? Perhaps it is safe to say that ideologies do not have a very close connection with either constructive radicalism or conservatism; an ideology, like the weather-cock, points with the wind.<sup>2</sup> The explicit side of an issue is not always the lasting clue.

But if there is to be any meaning in the term conservatism, something beyond the boiling point of the moment must be sought. Conservatism, it may be argued, is a phase or a form of social thought. In itself, it is an aspect of social process. It may be suggested that there are only so many fundamental issues possible among men as they are; and, further, that there are only so many possible answers or positions on these issues as long as men are as they are. Such might be argued at least, on a reading of historical human nature, and such probative conclusions as may grow out of the historical study of human behavior. It is the purpose of this article to try a clarification of some of these points.

Beyond all doubt, conservatism involves a theory of change. The whole world of social experience is never static, though parts of it may approach such a condition. Parts of the context of our lives change more quickly than others, and thus it is readily admitted that technology is changing faster today than social attitudes.<sup>3</sup> If radicalism is continually looking for the new world around the corner, conservatism is not. The conservative looks upon similarities and dissimilarities in social change, and the "fundamental" is practically always the similarity between two periods. Thus the fundamental is continuous through change; the chorus repeats itself even if the stanzas do not. The radical, on the other hand, is

<sup>1</sup> See Guido de Ruggiero, *The History of European Liberalism*, tr. from the Italian (1927).

<sup>2</sup> See, for example, Stuart Chase, "Ideological Immunity, 1975," *New Republic*, Nov. 8, 1939.

<sup>3</sup> See W. F. Ogburn, *Social Change* (1922); R. M. MacIver, "The Historical Pattern of Social Change," in *Authority and the Individual* (1937).

forced to conceive of a time in the future that in essentials will be different from the present; he looks upon dissimilarities between periods as the clues to social meaning. But some continuity in fundamentals is necessary for any idea of historical continuity or repetition, unless indeed one is willing to argue that all repetition is froth on the surface of reality.

Conservative emphasis touches in various ways the idea of what is changing, how it is changing, and what ought to change from one period to another. These notions of *what*, *how*, and *ought* in change focus finally on the problem of inequality in social experience. The great inequality, above all others, concerns the possession of power, whether economic or political, or simply power if one is not willing to make a distinction between the political and the economic.<sup>4</sup> But as power is of no significance in the abstract, so inequality is important as it touches the lives of men and women. Like money, power is valuable for what it will purchase, and aside from that it is worth as much as a continental. Inequality, therefore, is a phase of movement and change; it is a dynamic concept, and the mosaic of inequality is continuously changing in some aspects, yet always remaining the same in others. The fact of inequality itself is a fundamental continuity of history. It is part of the pattern of existence.

"The influential are those who get the most of what there is to get," declares Professor Lasswell. "Available values may be classified as deference, income, safety. Those who get the most are élite; the rest are mass."<sup>5</sup> Conservative emphasis has tended to approve of the fact of inequality, but it has also accepted changes in the structure of inequality in any society. If inequality, and its obverse, power, remains a fundamental similarity in historical continuity, there is no argument implied that either X or Y ought to be members of the élite.

Thus to the conservative it is the structure of inequality that is changing; inequality, or differentiation in the possession of power, is accepted as a normal fact in social life. It is normal, inevitable, that the composition of classes, of élites or oligarchies, should change; there is nothing radical in this, for the radical is driven to attack the postulates of normality that the conservative accepts.

<sup>4</sup> Cf. C. E. Merriam, *Political Power* (1934); Bertrand Russell, *Power; A New Social Analysis* (1938).

<sup>5</sup> Harold D. Lasswell, *Politics: Who Gets What, When, How* (1936), p. 3.

It would be no change of importance if the boards of directors of the leading corporations in the United States were altered completely in twenty-four hours; the functional aspects of those directorships would remain the same. The conservative mind at its best seeks for the basic patterns of repetition and change in relation to power. We may argue, therefore, that there is a trend toward permanence in the substance of these patterns, though the details may vary greatly from time to time. To be conservative, the assumption must be that the enduring pattern is the fundamental fact. Thorstein Veblen has argued that the search for prestige is one of the fundamental drives in the pattern of social behavior,<sup>6</sup> while Marx and Pareto have seen inequality in the distribution of economic power as fundamental in society.<sup>7</sup> But systems of prestige value and economic organization may disappear; that is, they may change, from the conservative standpoint, in superficial aspects, but they are not likely to on fundamentals.

Conservative thought, more than other types, has stressed the continuity of moral values. To the economic radical, such an attitude is façade for a mansion of iniquity. Christianity as a conservative force, for example, assumes continuity in moral principles. Depending upon the exegetical point of view, these values arise from human experience or from divine law, but as basic facts they do not need revision with the passage of time; the application made to specific situations may vary with social evolution. In *The Mind in the Making*, James Harvey Robinson raised the question: Why should we stay with Aristotle's Nicomachean Ethics when we have deserted his biology? The conservative would answer that the Ethics considers primary and lasting evaluations while the details of the biology are secondary as to social judgment. However, the conservative might consent to the proposition that continuity in moral values involves slow change, not only with the secondary aspects of life, but also with the primary evaluations contained in a system of ethics.

<sup>6</sup> *The Theory of the Leisure Class* (new ed., 1912).

<sup>7</sup> If the Marxian does not assume that in the higher reaches of socialism there will be equality, he does not thereby condone the inequalities of economic power found in capitalistic society. The continuing pattern in Marxism is exploitation, though it is argued that capitalism is a modern economic system. It can hardly be argued in the light of the *Communist Manifesto*, for instance, that there was a Greek or Roman capitalism. Pareto makes no assumption that economic inequality or political inequality can be eliminated. See *The Mind and Society*, tr. from the Italian (4 vols., 1935).

The continuity of moral values extends also to the possession of economic and political power, that is, to political régimes and to economic systems. Debate is most difficult on just what is fundamental in a religious system, a political régime, or an economic system. The conservative and his opponents cannot agree on this, simply because of the difference in mental attitude involved. If the radical or the non-conservative sees the differences between religious, economic, and political situations as most important, the conservative is convinced of the continuity of the primary or fundamental. What is basic, for instance, in political democracy? Is it the series of individual rights that the lawyer has traced with romantic history from the early days of the common law down to the present, or is it the right of the people to experiment with the organization of society, even if in a capricious manner? In both instances, there is continuity, but what is the primary aspect is not a matter of agreement; there is no concord on just what is changing.

The discussion of what is changing, or what aspects of inequality are varying, leads to the proposition that, in this respect, there is a primary and secondary conservatism. The primary or fundamental conservatism is broad in its nature, though it is constantly intermingled with the secondary or non-essential features of change. The conservative may well insist on the principle of private property while not maintaining the present system of the relations of production.<sup>8</sup> Various encyclicals of the popes since the rise of socialism in the nineteenth century have made this position of Christianity abundantly clear. The Catholic Church is a defender of private property, though it cannot be said that the Church is a believer in the current system of capitalistic production; fundamental changes are necessary, as the *Rerum Novarum* and the *Quadragesimo Anno* show. What many modern business men would accept as fundamentals in their conservatism is nothing but secondary detail in the principles stated by the Vatican.

Much the same type of argument might be developed in relation to political régimes. To the democratic conservative, the mechanics of popular rule, such as parliamentarism and civil liberty, have become increasingly important in recent years as these techniques have been demolished in the authoritarian countries. Gaetano

<sup>8</sup> Christopher Dawson, *Enquiries into Religion and Culture* (1933); *Religion and the Modern State* (1935).

Mosca has regarded the juridical defense of the individual as a proposition of fundamental character in the stability of any régime.<sup>9</sup> It is clear that one of the techniques employed by fascist governments is to break down the independence of the judiciary so that it will not be a haven for the political dissenter. We have yet to judge the propriety of the attempt to place techniques of government, such as are involved in the discussion of democracy, in the category of fundamentals. Can a primary conservatism rest upon political technique? All we can say is that the defenders of democracy are at the present time making such an effort.

Changes take place through time, and both radicals and conservatives must have an attitude toward history. The more there is emphasis on the justice of a cause or the iniquity of a situation, the more is the element of time retracted in thought, and the more is there a willingness to leap over time completely. If we inquire how change takes place, we find that the conservative is generous and uncritical of time, especially past time, and that his concern for the future is less than for the past. The liberal may be conscious of the past, but his eye is fixed on the future and the achievements that will be attained; the past cannot be forgotten, but it would not hurt to forget it. Radicals or utopians have little sense of time at all; the moment of apocalyptic realization is the culmination of a history that has been telescoped into the smallest duration.<sup>10</sup>

One of the primary values of conservatism is belief in the wisdom that has emerged from the past; nor can the conservative admit that changes accelerated to the point of revolution can ever be of substantial value in the future. The case against revolution argues that it is uncreative, and that it is merely destructive. Those patterns of social organization which are essential either to progress or to stability come only with the maturing of time; the impatience of the radical can never recreate what he has been, by accident, able to destroy. The value seen in the past may be more emotional than reasonable, as is shown in the sentimentalism of Edmund Burke in his *Reflections on the French Revolution*. But in the emotional response to a time-tested political organization we have one of the strongest drives in politics, and it is a source of support for conservative ideology. Indeed, power, in its impact upon the individual, can be an esthetic experience of the first rank, and some might

<sup>9</sup> *The Ruling Class*, tr. from the Italian (1939).

<sup>10</sup> See Karl Mannheim, *Ideology and Utopia*, tr. from the German (1936).

contend that patriotism is about the only esthetic experience that many citizens experience. No ideology can command support unless it has control over some emotional experience, and the ideas of Burke warmed the hearts, not only of Englishmen, but also of Europeans of many nationalities. While many conservatives in the late eighteenth and early nineteenth centuries were content with the Burkean interpretation of history, it can hardly be argued that his historical conservatism is equal to that of Machiavelli, Hegel, Spengler, Pareto, or Mosca. As a propagandist, Burke is strong, while intellectually and systematically he is weaker than others who have based their conservatism upon an interpretation of historical movement.

We have already argued that the conservative sees continuity in history, while the radical, because of his vision of the future, must insist on sharp differences in the elements of historical epochs. Continuity in fundamentals, similarity between periods, blends into the concept of repetition in history; for repetition in the conservative emphasis becomes simply a differentiation in continuity. Out of this differentiation, which is recurrent in nature, arises the notion of pattern in the historical process. Pattern itself is without meaning unless it concerns fundamentals or primary elements in the social process.<sup>11</sup> Cycles and fluctuations in history are pattern-like because there is a form of recurrence in each; the cycle moves back to something like the previous situation, while fluctuations have antipodal limits of movement. To the conservative, the complete evidence of pattern is found in the past, in a study of the historical behavior of human beings. On the other hand, utopian thought, because it is disconnected from reality, and is a prophecy of what will happen, seeks a pattern in a reasoned interpretation of what can be; the evidence of pattern is not to be found in experience, but in what may be experience in the future. To say that something has been means little in an argument for the discontinuity of history. The Marxian dialectic or the argument for Fabian socialism, for example, cannot be based on what has been.

In the end, contempt for history implies a revolutionary philosophy. In an age of change such as ours, it is possible to see the elements of revolution in every dark interstice of the social structure, and, just as the conservative develops an exaggerated fear of revo-

<sup>11</sup> See Pitirim A. Sorokin, *Social and Cultural Dynamics* (3 vols., 1937), for data on divergent theories on historical movement.

lution, so the radical develops a systematic mythology about the coming of the revolution. While philosophic radicalism in the nineteenth century did not become revolutionary in its main stream, it might easily have become so had it not aligned itself with the then unadmitted principle of a broadened right of suffrage.<sup>12</sup> Quite properly, Jeremy Bentham had contempt for history, since he was arguing for discontinuity with the past. Today it is possible to see that Bentham did not need to be so antagonistic toward history, considering the extent of the new propositions he was advocating; but living in the shadow of Blackstone and later of Burke imposed on Bentham's thought burdens that we today do not have. On the other hand, Marxism is a revolutionary philosophy, and is so inescapably. To draw a chart of the future so fundamentally different from all the recorded past makes it necessary to postulate a sharp break in continuity, though it has been helpful to believe that history has been working toward the achievement of socialism. For Marx, historical movement must extend beyond the limits of experience. Hence, bourgeois historicism can only be reactionary in its nature.<sup>13</sup>

The broad outlines of the conservative pattern of history begin to emerge when we consider the relation of the individual will to historical events. Historical development in the conservative emphasis has always something of the objective about it, especially if the result is to be approved; the conservative recognizes always the destructive power of the will as it is reflected in revolutionary activity. If the historical process is in a measure objective as to the individual will, it means the futility of primary reforms, and often bad consequences following secondary or less important reforms. Why should bad consequences follow? Why should primary reforms be futile? Much of the case of conservatism must rest on proving these points. The conservative answers that the durable human institutions have developed through time and in a given mold or process, and that only the undisciplined effort of the human will seeks to break these lasting bonds. Reform of a fundamental nature is only too often flying against the principles of stable social action, and the destructive minor reform prevents for the time being the normal working of historical process.

<sup>12</sup> Elie Halévy, *La formation du radicalisme philosophique* (3 vols., Paris, 1901, 1904), is one of the best works dealing with this question.

<sup>13</sup> Cf. N. I. Bukharin and others, *Marxism and Modern Thought* (1935), pp. 235 ff: A. I. Tiuneniev, "Marxism and Bourgeois Historical Science."



But conservatism always exists in relation to a particular situation. With Hegel, it is said that the real is the rational and the rational is the real. Indeed, to argue the irrationality of anything that involves a most difficult argument.<sup>14</sup> The very core of radicalism is a denial of the presence of any ultimate rationality in what exists at the present. It may be admitted that the course of dialectical development can use the present, but the final rational society will be an overcoming of what exists. The more utopian and unhistorical the radical mentality becomes, the more is there an inclination to deny any rationality in what exists. Conservatism, on the other hand, believes that both the rational and the ethical (though no distinction between them is necessary) must be valid in terms of the possible, that is, in concrete objects or situations that can express rational or ethical evaluations. Conservative thought is here separated profoundly from utopian thought, and to a less degree from a radicalism that accepts historical development as part of its judgment of current institutions.

Will is always more limited, therefore, in conservatism than in any opposing philosophy. The process of history objectively limits will, and the reason of reality is monitory or minatory in relation to the will. Thus the freedom of the masses is limited in fact, and there is ground for urging the élite or the ruling class to resist the masses in their assault on the turrets of heaven. Thus conservative leaders have tried to sense those changes which would free the masses, and they have opposed them as they were able. The great Chancellor Kent of New York State, for example, opposed the democratic tides of his day. He was opposed to popular education, and he believed in government by those who were most able and intelligent in their point of view.<sup>15</sup> In spite of an amazingly long record of the masses for docility, the conservative has feared them for the occasional disturbance in politics and economics that they have caused.

It has long been argued that the tyranny of the majority must be prevented, and the argument has been accepted as one of the pillars of conservatism. Yet modern experience might show, in the light of the malleability of the masses, that the tyranny of the élite can be more destructive of individual freedom, as argued by con-

<sup>14</sup> See G. W. F. Hegel, *Grundlinien der Philosophie des Rechts* (Berlin, 1833), Vorrede.

<sup>15</sup> See J. T. Horton, *James Kent; A Study in Conservatism* (1939), for a study of one of the great American conservatives of the nineteenth century.

servatives, than any other despotism. If the conservatives have long thought on how the masses can be stopped, they might think more today on how to create an intelligent ruling class that will not exploit the masses. From the time of the Greeks onward, it has been admitted that the best should rule, that the best form of government is aristocracy in the true sense of the word. The crisis of today, however, is a combination mass movement and irresponsible oligarchy. There is a core of individualism in the argument for the government of the best—that is, individualism of the superior members of society—but the contemporary movement seems to threaten the freedom that republicanism or limited democracy has believed in for those who are superior. Certainly, the current exploitation of the masses for war or domestic tyranny does not bring into responsible positions of rulership those who are the most intelligent in society. As Plato argued, the best should rule in the interest of the many, and there should no doubt be some control of the masses, yet little can be hoped for in the present situation for this historical principle of conservatism.

We are thus led to examine, from the conservative viewpoint, what ought to change. No conservative thought has been able, any more than radical thought, to reach a satisfying conclusion on the pattern at work in the interaction between the will of the masses or leaders on the one hand and the objective processes of history on the other. Conservatism has admitted that which exists in historical fact, one of these admissions being the possibility of revolution. The conservative has tended to underestimate the change brought about by revolution, while the radical, seeing the revolution as a kind of superstition of the future, has consistently overestimated the alterations that will be brought about by the revolution not yet consummated. A long historical perspective is necessary in any case to see what changes have taken place. We can better examine the changes wrought by the French Revolution today than we can those produced by the Russian; and the Chinese Revolution is obviously still in process. One can only wait. But each revolution produces its new conservatives or its defenders, and the remnants of the old régime may fight them hopelessly as radicals. The emigré mentality, however, has in historical perspective been more false than any normal conservatism.

The lasting issue raised by revolution, however, is the extent that primary changes are wrought. To what extent have the primary

values of the old society been changed? To what extent is the change related only to the superficial and secondary aspects of society? If the institutions of property, family, and religion; if the principles of patriotism and of historic imperialism survive the Russian Revolution, can we say that the changes have been more than secondary in their nature? Likewise, the forces released by any revolution require time to mature, and the sharp, quick judgment of the dispossessed is hardly worth the later and dispassionate concern of the historian.<sup>16</sup>

Conservatism has been able under most circumstances to accept, or even advocate, secondary changes in the social structure; but it has been unable to see undermined without a struggle the broader underpinnings of the type of society to which it adheres. Yet both radicalism and conservatism have suffered from ignorance of the social process at work about them. Neither has been able to predict with accuracy some of the most ordinary consequences of behavior. The more intelligent conservatism becomes, the more able is it to foresee what is going to happen. It can be argued with some plausibility that conservative prediction has a slight margin in its favor, simply because, aside from war and revolution, spectacular change has been extremely slow in becoming clearly outlined. Conservative prediction has usually rested on two propositions: the evil of human nature and the improbability of fundamental change coming in a short time. Men are as they are; and the framework of reason and ethics has been that of men as they have actually behaved. Because of their method of prediction, Machiavelli and Bacon<sup>17</sup> must be accepted as leaders in conservative technique. Ignorance of the historical process has produced in conservatism peculiar cases of social astigmatism. As the present issue has loomed over all others, the conservative has been able to predict the return of the age of Saturn, or the golden age, on the turn of an election, which in historical perspective is unimportant enough. Conservatives are at their best when they only have to live and do not have to argue that a change of policy might produce again the golden age.

Conservatism is not necessarily a defense of the *status quo*; in no

<sup>16</sup> See L. P. Edwards, *The Natural History of Revolution* (1927); Crane Brinton, *The Anatomy of Revolution* (1938); G. S. Pettee, *The Process of Revolution* (1938).

<sup>17</sup> See *The Essays of Francis Bacon* (ed. by M. A. Scott, 1908), p. lxxx; also Carl Schmitt, *Der Begriff des Politischen* (1933).

case could it be a defense of everything as it is, but it is a defense of primary elements in the social structure, with concessions made on secondary problems. Conservatism, however, is a manner of thought and a content of thinking that can be used if necessary in defense of things as they are, or at least it can be an argument for the deceleration of social change. Yet we have observed that the axiomatic thought of conservatism does not like controversy, since the present has always been wicked and it is hard to defend it against the speculative, doctrinaire ideas of the champions of ideal justice. Critical thought is generally more comprehensive and more carefully arranged than is the defense of existing institutions. As its appeal spreads, conservatism becomes more emotional, and more detailed in its response. Hence, conservatism seems weaker than it really is. The critical thinker may be self-assured about his picture of the future, but he is more likely to be strong in depicting the customary evils of the present. The conservative can usually afford to wait or to accept secondary changes, since there has always been a gap between the critical analysis of the present and the prediction of the future. In fact, there has been little connection between the condemnation of the present and the defense of what ought to be. Radicals may be united in denouncing injustice, but they have seldom been able to agree on the next step forward; on the other hand, the conservative, in defending what is, can usually argue that he is not responsible for it.

What is the strength of conservatism? Its force lies in its reliance on historical process and the probability that human behavior will follow a pattern somewhat like the past. Conservatism is weak in its statement of purpose, except on the most general lines, and in such a statement there is no basic difference between conservatism and critical thinking. One must descend from the clouds, from the mist of the generalities of high human purpose, before a distinction can be drawn between types of social attitude. All thinkers are for the betterment of the race or the nation; they are all for the greatest possible realization of justice. But it is the body of institutions and immediate political devices that count in the differentiation of conservatism from other types of thought.

Conservative emphasis does not overestimate human nature, or its capacity to attain organized purposes. It is one thing to say that men should coöperate, and it is another to state the terms or the conditions on which coöperation on a social problem may be

attained. The conservative as well as any one else may agree that if all men would be men of good will any human happiness might be attained. That stated purpose is disparate from the realization of purpose is the core of the conservative attitude toward life. The conservative discounts the passion for justice, just as he minimizes the consequences of new organizations for gaining utopia. Historical process and the working of historical human nature are much the same, although historical process assumes the objective interaction of historical human nature with its environment. In politics, this implies no idealization of the facts or the process of ruling. Government is little better or little worse than the average level of social behavior, and political techniques do not rise above their level.<sup>18</sup>

The conservative picture of politics is the mechanism of power. It may be simply a realistic approach to the problems of public opinion, and a willingness to spend money on propaganda. It may be a consciousness that the public anger of today will pass and that the techniques of the trade can be used in more calm days ahead. At least, the people always have calmed down; so they should do it again. It may be the statement of high principles so that men will lay down their lives to stop X who is the latest menace to the empire and therefore to civilization. Mr. Mencken, in his *Notes on Democracy*, speaks of the negative, emotional character of the action of public opinion, and the conservative realizes only too well its ineffectiveness compared with the results of steady and well-organized administration in business or politics. It may be Mr. Frank R. Kent with his *Great Game of Politics*, and his demonstration, which should be unnecessary, of the balance of power held by the minority—if it is organized. Or it may be Machiavelli and the lucid doctrines of *The Prince*, which help to explain the vicissitudes of fortune and virtue in the process of politics. Again, it may be the doctrine of *ragione di stato*, the principle of the interest of state, i.e., the dynasty, or that of national interests which every democrat is ready to defend.

Whatever the immediate issues, the conservative takes things as they are on the secondary plane of practical politics. To reverse the Jesuit statement, to him who has assumed the end, the means must be assumed also. Conservatism in its forceful moments is never separated from the actuality of experience, while radicalism

<sup>18</sup> Cf. Henry Jones Ford, *Representative Government* (1924).

hangs always over the abyss of utopianism. Men may vote to end poverty in California, but poverty is not to be ended, if ever, in this way. The crucial issue to the conservative is all too often to mark off the boundaries between what is "sound," "expedient," or "practical," from that which is utopian vision. This boundary is a fluctuating and uncertain line that haunts magnanimous minds, for all men know that the consequences of action are seldom like the purposes of the beginning.

The conflict between purpose and consequences of action is to be explained, according to the conservative, only by the objective intervention of historical process, and the burden of the realist is to understand, so far as possible, those factors which direct objectively the course of historical development. Because the best conceived purpose is erratic in result, because purpose tends to be utopian in character, and because when purpose is utopian it becomes destructive in its collision with process, stability becomes a primary value in conservatism's analysis of how things ought to change. Stability is the keystone in the arch of social reality. Stability is a value in itself. And so it has been with conservative thought for centuries. Whether we take Coluccio Salutati, quoting Augustus to the effect that "He who is unwilling to change the existing order in the state is a good citizen and a good man,"<sup>19</sup> or follow Thomas Hobbes' *Leviathan*, the answer is always the same. Revolution and civil disturbance are bad because risks of change are great, and because the revolution never attains its first intentions. Stability is the context of progress, and upheaval is the matrix of retrogression. In certain situations, it is stability alone that can preserve the group. In reviewing Bryce's *American Commonwealth*, Woodrow Wilson remarked that America will one day find herself grown old, strained, and perplexed, and "she will be obliged to fall back upon her conservatism, obliged to pull herself together, adopt a new regimen of life, husband her resources, concentrate her strength, steady her methods, sober her views, restrict her vagaries, trust her best, not her average, members."<sup>20</sup>

No conservative would deny that in the working out of historical development, there are times of rapid change and times of rela-

<sup>19</sup> See Ephraim Emerton, *Humanism and Tyranny* (1925), for Salutati's treatise "De Tyranno," chap. 4.

<sup>20</sup> Reprinted in R. C. Brooks (ed.), *Bryce's American Commonwealth, Fiftieth Anniversary* (1939), p. 182.

tively slow change, and that there is a difference in the rate of change of different environmental structures. To the conservative mind, a period of rapid change should be regarded as a transition between stabilities, since the object of understanding and policy is again to reach social order and coherence. If technology is marching ahead with seven-league boots, as Professor Beard is wont to say, the conservative will not admit that basic institutions, or that the primary social values, are changing at the same rate. But in judging dynamic elements of inequality in society, the conservative must keep in mind the difference between his primary and secondary conservatism. Social stability postulates historical continuity of political and economic institutions; it means that morality as social cement is steadier than technology. But the techniques of politics and economics need not be placed in the same category; it would mean that property, for instance, is more fundamental than the techniques which make up modern capitalism, and that political experiment within the context of order is not always to be condemned. It would mean that such a word as "democracy" should be looked at through historical perspective rather than through the smoke-screen of ideological emotion.

We live in a time when intellectuals are satisfied with little of the social structure, but much with the concept of natural science and its expansion to cover the social. Intellectuals are now floundering on the shoals of analogy between social and natural science. But natural science is law or probability, while to the rebels social science must answer the enigma of the relation between purpose and process in history. The conservative leans on process as his governor, while the critical thinker struggles desperately to expand the predictability of purpose in action.<sup>21</sup>

<sup>21</sup> The historian who claims to be purely scientific wants to be used by neither radicals nor conservatives. He is interested in the past, which offers some possibility of being certain. He does not claim great insight into the future. However, social thought will not let the historians alone.

## THE DILEMMA OF JURISPRUDENCE

FRANCIS D. WORMUTH

*Indiana University*

Law, we are accustomed to say, comprises two elements. It is a body of obligatory rules of conduct, but it differs from other obligatory rules, such as moral precepts or the rules of a game, in that it is enforced by the state. On the one hand, law exists as a conceptual system of normative rules; on the other, it dwells as well in the realm of brute fact, where it is something that is "done" or enforced by the state. But here surely is a snake swallowing its own tail, for the state which concretizes law on the level of actuality is itself a creature of the realm of ideality: the state is meaningless except as a legal concept.

What is needed is a treatment of law which will equate the actual practice of government with the conceptual system of rules that are obligatory, not merely upon citizens, but upon government as well. There seem to be good *a priori* reasons for believing that this cannot be done, and for believing, furthermore, that no definition of law in terms of either of the elements alone will be satisfactory.

The American writers loosely grouped as "realistic" have made a thoroughgoing effort to solve the problem by omitting the normative element. With individual variations, these authors have argued that law is simply the behavior of the judge. Since the judge is a man, the law which he makes is a by-product of his personal existence, secreted, perhaps, as a result of a bad breakfast, as a pearl is secreted by an oyster. It is meaningless to talk of law as obligatory, or law as rule. Law is occurrence, on the simple level of fact, and it is not to be discussed in terms of obligation or validity, ideas which are the product of folklore or father-fixation.

This position involves two distinct affirmations. The first is the contention that law is nothing more than the behavior of judges; the second, the assertion that all judicial behavior is law. Neither is tenable. Let us examine the proposition that law can be reduced to the behavior of judges. The objection arises that the very use of the term "judge" implies the normative scheme which the realists deny, for what marks off the judge from other men except that he occupies a preappointed place in a legal scheme? But it may be said that the judge is defined not by law but by function: one discovers who is a judge just as one discovers who is a milkman, by



observation. This is the point of view of "social anthropology," popularized by Thurman Arnold. For its purposes, this view is adequate and admirable; but these differ from the purpose of jurisprudence. The purpose of jurisprudence is to localize law, to identify law as we identify the milkman. But Arnold's point of view gives us no help here. For law cannot include all of the judge's behavior. It cannot be the judge's behavior in the capacity of father, or gambler, or Mason: it is his behavior in the capacity of judge. There is at the core of this identifiable man a Platonic essence, the essence of the judge. His judicial character consists in his correspondence to an abstract category external to him. This category of judge is not the behavior of the judge, but an independent legal norm.

But it may be denied that the judge possesses an abstract character of judgeness. It may be said that law is merely an identifiable part of the behavior of an identifiable man: it is that part which occurs at given hours of the day in courtroom or in chambers. But here again the need for discrimination arises: we must eliminate the process of respiration, and the witty asides to counsel, and the other non-judicial activities which occur simultaneously with the "judicial process." In short, in order to discover law in the behavior of the judge we must know what it is before we begin our inquiry. Law is only a part of the behavior of the judge; and the judge is a man who undertakes behavior of this order. His character as judge, then, is derived from the fact that he practices law; and we have here a legal rather than an anthropological norm for the identification of judges. This is a conclusion we might have anticipated from the beginning, for a functional category, as Socrates demonstrated to Thrasymachus, is a normative category.

It seems necessary, then, to reject the first realist contention, that all law is judicial behavior. This involves also a rejection of the second position, the statement that all judicial behavior is law. The very nature of a functional classification is to constrain behavior within limits, and it is certainly possible for a judge to exceed the limits of judicial office. To call such excessive behavior law is once more to spill law outside the judicial capacity of the judge, and to make it useless as a term of discrimination. This can be demonstrated on the practical level. If law is equated to occurrence, not merely is every occurrence legal, but no occurrence, at least none produced by the judge, is illegal. But law needs illegality

as God needs the devil—a proof, perhaps, of its normative character. Take the mythical case of the justice of the peace who mistook his powers and hanged a man. This, according to the realists, is lawful, for it is the conduct of the judge. Now let us suppose that a superior court hangs the justice of the peace for murder, as would happen according to a properly appointed normative scheme. This also is lawful, for it is likewise the conduct of a court. A view of law which introduces such absurdities into a situation so well understood by ordinary men is surely to be suspected.

It is clear that in the realist scheme the word illegal can have no meaning, and in fact it cannot occur except as a mouthing on the part of the judge. This makes the duties of police officers altogether too easy. There is no need for them to strive for law enforcement, for the actions of supposed criminals are legal; or at any rate they become illegal only when the judge, provoked perhaps by the dyspepsia characteristic of magistrates, denounces them as such. A record of one hundred per cent legality cannot be improved; why hale persons before the police court?

The realists have not taken up this position without provocation. Apparently the decisive factor impelling them to their conclusions has been observation of the judicial process. No candid observer will deny the allegation of Jerome Frank that a very considerable part of judicial business is determined on some other basis than the application of settled rules to the facts. The law is altogether too fluid and too episodic to be regarded as a regular balancing of the scales. By calling attention to the uncertainty attending the judicial process, the realists have done a great public service.

The feature of obligation rather than the alleged certainty of a normative system of law has been the cause for objection by other writers. Justice Holmes evolved a settled philosophy, echoed also in casual phrases by Justice Cardozo, which attempted to retain the element of certainty and predictability in law, but to banish the idea of obligation. "What I mean by law," said Holmes, "is nothing more or less than the prediction of what a court will do." And Cardozo: "A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged . . . is a rule of law."

Apparently the purpose here is to evade the troublesome concept of obligation by defining law simply in terms of human conduct,

but in terms of the predictable aspects of human conduct rather than the personal caprice which is law to the realists. Law is to be assimilated to judicial behavior, but only to the regularities of judicial behavior. This raises the same problem that vexes the realists. If law is predictable behavior, predictable behavior is law. When law abandons its character of obligation and sinks to the level of motivation, it becomes indistinguishable from other motives whose effects are predictable.

There are circumstances under which a prediction as to the outcome of a case can be made with reasonable certainty, and yet we would shrink from applying the name of law to the process. If a judge accepts a bribe, for example, his decision is predictable. It may be law, but is it law by virtue of its predictability? During the "Popish Plot" prosecutions before Judge Scroggs, the charges to the jury were eminently predictable: were they therefore law? The prediction Holmes and Cardozo have in mind is not prediction in terms of uniformity, on the level of invariable behavior, but in terms of conformity—conformity to a set of rules which exist behind the judge, and in some sense are obligatory upon him.

This becomes clear if we analyze their statements. The rule must be so well established that prediction is justified. Perhaps this means that the rule is law if the prediction is a reasonable one, even though it is not vindicated by actual application by the judge. In this case clearly the rule exists apart from the judge, and it is meaningful to stigmatize the judge's conduct as a departure from law. Law, then, has a normative element. Or perhaps the prediction is "justified" only if the court actually applies the rule, and makes the prediction come true. Here we have two choices. Either we regard the rule as being merely motivation in the judge, to be treated as on all fours with other motivation, which, as we have seen, extends the name law to all predictable influences; or else we hold it apart from the judge, and regard his action in applying the rule as some sort of tribute to the rule which justifies the earlier prediction that he would follow it. The first alternative plunges us into the chaos of the realists; the second is a normative conception of law.

The realists, then, have boggled at the definition of law as rule, because it is evident that in many cases the actual behavior of courts does not consist in the application of rules. Holmes has retained the conception of law as rule, but has attempted to oust the

obligatory element. But this attempt is bound to be unsuccessful, for the very nature of a rule is to be normative, and to deprive it of its normative character in favor of predictability is to destroy its identity and sink it in the great mass of predictable motivation. With regard to both attempts to equate law to human behavior, it can be said that law disappears in the process. Certainly human behavior exists, and it is possible to say that "what I mean by law" is all judicial behavior, or predictable judicial behavior. It is possible to say that law is what the judge or the government does. But this is a lifting of oneself by one's boot-straps, for the word "judge" and the word "government" imply a normative scheme of law. Further, it is to deprive law of any meaning apart from what actually occurs, and even the realists, even Holmes, believe in the utility of a definition of law as a criticism of what exists, a normative definition. The attempt to equate law to actuality lops the ideal head from the feet of clay, and leaves a truncated thing which merely is, but is not "law."

On the other hand, treatments of law have been multiplied which define law as a normative, conceptual system of rules without attaching the requirement that these rules be "done" on the level of fact. This is a dangerous game. The creation of ideal realms of fantasy is in some quarters called schizophrenia, and it may be only a question of time before the "heaven of concepts" of jurisprudence which Ihering denounced, and the kingdom of pure money-metal, the gold standard of economics, are added to the roster of delusive retreats from reality. At any rate, it is clear that a normative scheme which has no connection with reality has little claim to be the law of jurisprudence. A definition of law which would permit the Spanish and Mexican and American legal systems to coëxist at the same time in Texas would possess little utility. The test by which law is to be distinguished from other systems of rules is the critical requirement that it actually be enforced, or done, by government. But a definition of law in terms purely of its normative character cannot meet this requirement. According to the champions of the phonograph theory, the law, that "brooding omnipresence in the skies," is valid, whether or not it is successfully applied by the courts. A rule does not lose its normative character by virtue of being violated; it is only descriptive rules which must mirror the facts. So a judicial decision which does not truly recite, in phonograph fashion, the provisions of the

immutable code in the skies simply is not law. A wrong decision is not law. This introduces a cleft too wide to be bridged. What good is a system of jurisprudence which remains in the skies, and is not given effect by the courts? What is the standing of judicial decisions which depart from the ideal code, and are illegal? For practical purposes, one must assume that the courts, like the Archbishop of Canterbury, are not infallible, yet never err. But courts do reverse themselves, and either the earlier or the later rule must be wrong. We must be still more generous to the courts, and must say, with the New Jersey Court of Errors and Appeals, that the present holding is always the right one: "What a court declares to be the law always was the law, notwithstanding earlier decisions to the contrary." Still, at other dates the courts have been in error, and it may prove to be true at some future date that what the courts are at present doing is not law.

The phonograph theory can stand as the representative of all schemes which establish a normative code apart from and behind the government. A constitution which is the will of a popular sovereign mandatory upon a government is the same kind of thing. All systems of rules of this sort purport to be instruments of censorship of governmental action; yet they are actually at the mercy of government, for, as we have seen, it is meaningless to call a rule which is flouted by government a rule of law. The framers of the United States constitution required that "every order, resolution, or vote to which the concurrence of the Senate and the House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him," and declared, further, that "the Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution." Clearly the sovereign authority in the United States has decreed that the President shall have a voice in the proposal of amendments. Not one of the twenty-one amendments was ever submitted to the President for approval or disapproval. In case of a conflict of this sort between the ideal code and settled governmental practice, which is actually law? He would be a bold soul who declared that the amendments were not part of our constitutional law. We gloss over such affronts to the fundamental law by calling them interpretations, but clearly repeal or usurpation would be a better term. No question of popular ratification of

the usurpation can arise, for by its very terms the constitution can be changed only by the amending process. Nor is prescription a possible argument, for *Nullum tempus occurrit regi* is a maxim as sound in American law as in English.

If the standing of the ideal code as law is dependent upon its recognition and enforcement by government, it is clear that the action between law and government is reciprocal. Government derives its standing as government from law, and governmental actions in violation of law are illegal; but law derives its standing from government, and rules not given effect by government lose their legal validity.

It may be worth while to examine the formulas which purport to rationalize this situation. Such formulas must of necessity accept both of the aspects of law with which we began. It is necessary to argue that law exists apart from and behind the judge, confers upon him his legal status and supplies him with rules which are obligatory upon him; but it is necessary likewise that the judge obey and practice these rules, or they cease to be law. To meet our needs, law must constrict the facts like a vise, and yet must yield to the facts like a glove. Simple observation raises serious doubts as to whether there exists a law which meets these tests. Reflection raises doubts as to whether such duality can be meaningful. But let us examine the positions taken in jurisprudence.

The rules must be obligatory upon the judge; they cannot be reduced, as Holmes' definition would reduce them, to mere motivation. That would give us a psychology rather than a jurisprudence. This quality of obligation evidently lies at the heart of the mystery of law. What is the character of legal obligation? It cannot be moral obligation, for we have already rejected this by including as an element of law the requirement that courts actually enforce the rules. Moral obligation cannot stoop to this necessity. We are back at our old dilemma. Solutions of two sorts are offered, in terms of law and in terms of fact. It is argued that the obligation exists and is meaningful only within a postulated jural scheme, and the modesty of this position is thought to disarm criticism. Or, alternatively, it is argued that the obligation of law is a compulsion of the will which actually exists on the practical level.

To ascribe the obligation of law to its legal character involves us either in a circle or in a tautology. The system of rules is law, because it is obligatory, and it is obligatory because it is law. All

attempts to explain the obligation of law in terms of law are attempts to make law self-obligatory. So Jellinek refers law back to a legal sovereign who is a mere abstraction from the rules of law. Kelsen remarks that the nature of law is to be obligatory. But is it possible to confine the discussion of law and its obligation to this rarefied level? An obligatory rule should not cease to be obligatory because it is disobeyed by the courts; and yet this is the fate of a rule of law. Nor is it any solution to pretend that the courts never disobey the rules of law. For one thing, all the evidence is against this assumption. Furthermore, this leaves unresolved the question of the source of the obligation: if law is simultaneously the invariable practice of the courts and a set of obligatory rules, it is by no means clear that the second characteristic does not derive from the first. If the second exists only in the presence of the first, there is surely some sort of dependence, and the attempt to make law self-obligatory is unsuccessful.

John Austin chose the other road and undertook to ground his scheme in fact. As a matter of solemn fact, there is in every political society an uncommanded superior who receives habitual obedience from the citizenry. The commands of this sovereign superior are known as law; they exist in point of fact, and they receive habitual obedience from the courts. The rules exist; they coerce the judges; and they can meaningfully be referred to a human source. Many potent objections have been urged to this scheme: one will suffice here. That is the argument that there is in no society a sovereign capable of enforcing complete subordination to his will. The reply of Austinians is that the sovereign has jural omnicompetence though not factual omnicompetence. The sovereign then possesses authority in fact in the fields in which he can safely issue commands, and possesses legal authority in other fields in which he possesses in fact no power. But in these other fields clearly some person or persons, nominally subject, possess in fact the power of commanding obedience to their will. The sovereign's conduct in refraining from legislating is testimony to their power. Could it be argued that they are in fact sovereign in these fields, and that in other fields in which they hold no veto power they possess nevertheless jural omnicompetence? This gives us an embarrassing plurality of sovereigns and of legal systems.

Of course there is in the modern world, though not in the medieval world, an easy means for distinguishing Austin's sovereign

from these spurious ones. Government is a recognizable institution if not a definable one. But does it become a "legal" institution merely because it is identifiable? Not if the test of legality is the power of enforcing submission to its will, and this is the test that Austin offers us. The wills which do succeed in effectuating their purposes are multitudinous, and by this practical test they can fairly compete with the governmental will for the name of sovereign. What Austin does is to attach the name law to a set of everyday practices in which there does occur with a fair degree of regularity the subordination of will to official command, and then to expand this practical sovereignty, whose power to bind was originally defined as a matter of fact, into a "jural" sovereignty whose authority is not a description of an actual coercion of wills but a purely postulated right to command not dependent upon any sort of obedience. This sovereign is not measurably different from Jellinek's; and this law is still an unmanageable combination of the ideal and the actual.

The question may be stated thus: Can government be defined in terms of law if law must be defined in terms of fact, when the fact is governmental action? Can law be defined in terms of governmental action, if governmental action is measured in terms of law? Is it meaningful to validate law in terms of government, and at the same time to validate government in terms of law? It is submitted that the idea of law necessarily includes both the concept of obligation and the concept of actual practice, and that these two ideas, the world being what it is, cannot be included in the same term. In point of fact, of course, we recognize the stress between these two elements. We recognize that rules of law exert some sort of compulsion upon judges, and that judges exercise a very real power of life and death over rules of law. A practical definition perhaps would read as follows: Law is not a body of obligatory rules, but approximates a body of obligatory rules, which are not completely enforced, but are approximately enforced, by government. It is a denizen of two worlds, which lives in neither, and does not live in both at once. It is a conception peculiar to man, the rule-making animal, a product, perhaps, of the evolutionary development of a gregarious creature. Surely the impossible idea does serve a purpose: it would be difficult to picture a human society which could afford not to make this useful confusion.



## AMERICAN GOVERNMENT AND POLITICS

**The Contest for a National System of Home-Mortgage Finance.** Since 1932, the federal government has undertaken new responsibilities in regard to housing and home finance which involve a public investment of more than four billion dollars, contingent liabilities for the security of a private investment of three billion dollars, and the creation of a set of administrative structures that cover the entire nation. Yet, despite the magnitude of this public effort, no new "system" of housing has resulted. It is precisely the striking lack of coherence in the government's program that gives a hint of the variety of forces now competing for control and for advantage in this field.

Not until 1937, after a stormy period of improvisation, was the first workable formula of public housing agreed upon.<sup>1</sup> Surely it is clear that the nation was not preoccupied throughout the depression years with the cause of those most in need of proper dwellings. By 1937 there had already been enacted the Federal Home Loan Bank Act,<sup>2</sup> the Home Owner's Loan Act,<sup>3</sup> and the National Housing Act,<sup>4</sup> all of which dealt with some aspect of housing and none of which made any serious approach to slum clearance or housing for the masses.

Whereas the depression brought no essentially new crisis for the ill-housed, it did represent a critical time for home tenure. Home ownership in this country has always been extensive, and ownership is usually not achieved without contracting some amount of mortgage debt.<sup>5</sup> Thus it was possible for several million home-owners to be caught up in maladjustments of the nation's credit system. That home-owners gained public attention more readily than the less fortunate tenants of slum districts and blighted areas is certainly not to be attributed to the effective organization of the former. There was nothing approaching a "farm holiday" movement among urban mortgage debtors. Home-owner debtors attracted public attention because their salvation would not disturb the status quo—as would public housing—and because their interests were linked for the moment both with the plight of the nation's creditors and with the prospects of recovery for a distressed realty market.

<sup>1</sup> The United States Housing Act, creating the U. S. Housing Authority, was enacted Sept. 1, 1937, 50 *Stat.* 888.      <sup>2</sup> Enacted July 22, 1932, 47 *Stat.* 725.

<sup>3</sup> Enacted June 13, 1933, 48 *Stat.* 128.      <sup>4</sup> Enacted June 27, 1934, 48 *Stat.* 1246.

<sup>5</sup> Real property inventories conducted in two hundred urban areas from 1934 to 1936 revealed that more than two-fifths of all occupied units reporting were tenanted by owners. Over one-half of the owner-occupied single-family dwellings were mortgaged. Works Progress Administration, Division of Social Research, *Urban Housing; A Summary of Real Property Inventories Conducted as Work Projects, 1934-1936* (Washington, 1938), pp. 7, 9. It is estimated that the national total of home mortgages in 1930 amounted to twenty-two billion dollars. Federal Home Loan Bank Board, *Fifth Annual Report, 1936-37*, p. 6.

The Home Owners' Loan Corporation met the immediate crisis through the wholesale refinancing of a million individual loans amounting to some three billion dollars. But at best H.O.L.C. lending was only a temporary measure, and it is of importance here primarily because it prepared the nation for the steps that were to follow. In spite of its gigantic extent, mortgage refinancing in itself did not serve to divide opinion on any fundamental issues. Creditors were relieved of a crushing weight of frozen assets in a time of great stress, and debtors obtained more favorable credit terms than had ever before prevailed in this country. It was well understood that in the H.O.L.C. no permanent socialization of mortgage lending was intended and no attempt to preserve home ownership irrespective of public cost. There was a good chance that refinancing would be largely self-liquidating if the return of more prosperous times could be awaited.<sup>6</sup> Under the circumstances, it was easy for those normally skeptical of public enterprise to tolerate an unprecedented government operation in direct mortgage lending that must be accompanied by some amount of misjudgment and waste.<sup>7</sup>

If the salvaging of distressed home mortgage debts had been the beginning and the end of government's crisis program in mortgage finance, this study would be little complicated and not very significant. The findings would only confirm what we already know of other types of public underwriting of the nation's credit structure in the same years. But a wide variety of interests were looking beyond the immediate need of stabilization and seeking government aid in restoring and strengthening their position in American housing. There was, to be sure, an insistent popular demand for new and more stringent public regulation, but at the same time government was being urged to put private finance and business to work to help us build our way out of the depression. The ensuing development of federal action must be viewed in terms of the attempt to balance the interests in public control with the interests in promoting recovery, and of the contest of organized groups over the distribution of the direct benefits.

This contest has had the unfortunate result of dividing the government's program into two largely incompatible and competing plans, the

<sup>6</sup> Complete self-liquidation was never imposed as the single guiding principle of refinancing. The President, in his message to Congress accompanying the Home Owners' Loan Bill, stated: "The terms are such as to impose the least possible charge upon the National Treasury consistent with the objects sought." *Congressional Record*, Vol. 77, p. 1618.

<sup>7</sup> Even a subsequent record of H.O.L.C. foreclosures that by 1940 reached some 17 per cent of the original number of loans, and a record of losses in the disposal of acquired properties that averages around a thousand dollars a sale, have brought forth no concerted attack. See the statement made before the House subcommittee at hearings on the Independent Offices Appropriation Bill for 1941 in December, 1939. *Hearings*, p. 1155.

first centered in the hands of the Federal Home Loan Bank Board, the second in the Federal Housing Administration. Both plans seek to strengthen the facilities of home credit through national organization. But the mode of each is quite distinct. The Home Loan Bank plan attempts to unite the strength of local credit *institutions* in a national system bulwarked by central reserve facilities, standardized national charters, and share insurance. The Federal Housing plan, on the other hand, attempts to unify, not the lending institutions themselves, but the form and security of the *mortgage loans* they make. This latter object is to be accomplished through the provision of national premium-paying mortgage insurance for loans of approved standard held by any authorized lending institution.

The Home Loan Bank plan has special appeal for the savings and loan associations because of the essentially local character and isolated position of these institutions, excluded as they are from the benefits of the Federal Reserve System and from the national supply of capital available to the large life insurance companies. Since the savings and loan associations have for many years been the nation's largest single group of home-mortgage lenders, their part in any new mortgage system is not to be considered lightly.<sup>8</sup> But the Federal Housing plan of mortgage insurance fits the special needs, not of the savings and loan associations, but rather of the banks and the life insurance companies which have large idle reserves and which can afford to invest in government-insured loans at a relatively low rate of interest. Approximately one-half of the total amount of F.H.A. insured mortgages today are held by national and state banks and trust companies; nearly 20 per cent are held by life insurance companies; and the savings and loan associations hold only some 11 or 12 per cent.<sup>9</sup> The savings and loan associations, as investment institutions, insist that they must pay more for their funds and cannot make extensive use of mortgage insurance at rates as low as four and one-half per cent. As specialized home mortgage lenders, the associations view with some alarm the spectacular growth of lending insured under terms they cannot hope to control.

Since the federal government is now deeply involved both in the Home Loan Bank Board's program and in F.H.A. insurance, great strain is placed on the administrative capacity of the federal service in any at-

<sup>8</sup> In 1930, there were close to 12,000 savings and loan associations in the United States, with nearly nine billion dollars in assets and over twelve million members. H. Morton Bodfish, *History of Building and Loan in the United States* (United States Building and Loan League, Chicago, 1931), p. 136, table I. Savings and loan associations draw their funds from small share investments of people of modest income. They have loaned almost exclusively on home properties, and their loans have generally been for relatively long terms with regular amortization of principal. See Morton Bodfish and A. D. Theobald, *Savings and Loan Principles* (New York, 1938), Chaps. 7-8. <sup>9</sup> *Insured Mortgage Portfolio*, April, 1940, p. 4.

tempt to harmonize the conflicting elements. The development of the two federal programs has not called forth more general political comment because the most insistent demands for a revival of construction are being met, and because the contest over methods has not yet been seen as vital except to the financial and business groups directly concerned. None the less, mortgage lenders and construction interests are at present so dependent on government action that the course of public policy is very surely determining the control and the stability of housing finance.

The savings and loan associations established their control of the Home Loan Banks largely by default. The original conception, as envisioned by former President Hoover, had been of a national mortgage reserve system serving no one type but all institutional lenders. In 1930, home mortgage holdings were widely dispersed among a variety of lenders. The savings and loan associations held 31.5 per cent of the nation's total, the mutual savings banks 15.8 per cent, commercial banks 11 per cent, life insurance companies 8.3 per cent, the remaining 33.4 per cent being distributed among individuals, title and mortgage companies, trustees, and other small holders.<sup>10</sup> Because lending was so dispersed, and because terms and interest rates and appraisals varied so widely, private finance had developed no real central home-mortgage banking system, as in Continental European countries.<sup>11</sup>

It was Hoover's ambition to create under government sponsorship and control a sound and conservative mortgage reserve system with authority to issue debentures on the security of long-term amortized home mortgages. Amid the decline of construction activity which was beginning to command public attention after 1930, the President found occasion to launch his plan.<sup>12</sup> The Federal Home Loan Bank Act of 1932 is an excellent expression of Hoover's view of the proper relation of government to private enterprise. The federal government would provide the initiative for organization, but once the home loan banks had been established, they would draw as fully as possible upon the resources of their members for capitalization and management.

Under normal circumstances, the life insurance companies and some of the savings banks might have been persuaded to accept membership in the new reserve system. But in 1932 all lenders were facing an ominous

<sup>10</sup> Federal Home Loan Bank Board, *Fifth Annual Report*, 1936-37, p. 6.

<sup>11</sup> See Melchior Palyi, *Principles of Mortgage Banking Regulations in Europe*, Studies in Business Administration, V, No. 1 (University of Chicago Press, 1934). Mortgage bond houses did make their appearance in this country during the 'twenties, but these houses specialized primarily in large commercial properties, apartment developments, hotels, and office buildings. The private mortgage bond structure collapsed completely in the depression.

<sup>12</sup> See *The President's Conference on Home Building and Home Ownership*, II, Report of the Committee on Finance and Taxation, 1932.

crisis of frozen assets, and it was a most unpropitious time to be talking of permanent measures. Only the savings and loan associations were prepared to make good their opportunity, and now by default they came into uncontested possession of a national reserve system not unlike that which they had for years urged in Washington.<sup>13</sup>

The 12 Home Loan Banks have grown in membership and strength through a steady and unspectacular progress. There are today some 3,900 member institutions, and cumulative advances to them have amounted to some \$580,000,000.<sup>14</sup> The Home Loan Banks have won the full confidence of investors, and their five issues of consolidated debentures have regularly been over-subscribed.<sup>15</sup> From the beginning, however, other mortgage lenders have given no sign of grudging the savings and loan associations the services of the new reserve system. Even a government investment of over a hundred million dollars that proved necessary for the opening of the banks was hardly questioned. Although it was recognized that the sale of consolidated debentures could supply the associations with increased mortgage funds, there was little in the reserve bank plan to disturb the mortgage companies, the banks, or the life insurance companies.

At the same time, the savings and loan associations had established for themselves an official sponsor in the Home Loan Bank Board in Washington. The Board promptly took the lead in efforts to prepare the associations for as large a responsibility as possible in this field of finance, and its continued activities in this direction could not fail to draw the fire of competing mortgage institutions. The first challenge involved the establishment of federal associations. Almost unnoticed as a part of the Home Owners' Loan Act of 1933 was a provision for the incorporation under national charter of federal savings and loan associations.<sup>16</sup> Federal associations could be created as new associations or could arise from the conversion or consolidation of existing state-chartered institutions. Incorporation was to be applied for by private parties, and conversion was voluntary. The new "federals" were intended to operate at the side of state-chartered associations, much as national banks operate along with

<sup>13</sup> Since the end of the World War, the savings and loan associations had been urging legislation for a reserve system. In 1919, the Calder-Nolan Bill was introduced, H. R. 7597 and S. 2492, 66th Cong., 1st Sess. The bill was reintroduced perennially in the following sessions of Congress until in 1928 the associations agreed to discontinue the effort. Bodfish, *History*, p. 214.

<sup>14</sup> By 1940, cumulative advances of \$581,922,000 had been made and repayments amounted to \$400,609,000, leaving \$181,313,000 outstanding. *Federal Home Loan Bank Review*, Feb., 1940, p. 163. During fiscal 1939, mortgage loans by member associations accounted for 79 per cent of loans by all savings and loan associations. Federal Home Loan Bank Board, *Seventh Annual Report*, 1938-39, p. 75.

<sup>15</sup> The cumulative amount of all five issues is \$142,700,000, all but \$48,500,000 of which has now been retired. Federal Home Loan Bank Board, *Seventh Annual Report*, 1938-39, pp. 65-66.

<sup>16</sup> Home Owners' Loan Act, Sec. 5, 48 Stat. 132-134.

state banks and trust companies. Each federal was to be subject to the provisions of the act and the regulations, supervision, and examination of the Home Loan Bank Board; and each was to become a member of the Home Loan Bank in its respective district.

When the Home Owners' Loan Act was passed, it was made to appear that the federal associations would fill the gaps left by the financial collapse and would extend the mutual type of lending institution to communities where there had been none before. The question of conversion from state to federal charter was left almost completely undiscussed. The Home Loan Bank Board was well aware that the first necessity was not the establishment of many new institutions. The significant fact in its eyes was that the associations would be *federal* and would form part of a unified national system. The Board had come to recognize a fact that President Hoover had neglected to consider, namely, that a more direct reconstruction of the operative lenders was required than could be accomplished by the very gradual and indirect unifying influence of the home loan banks alone. The federal charter could be an instrument to this end. Even a limited number of federal associations scattered over the country would serve to demonstrate the merits of approved organization and the advantages of home loan bank membership. The Home Loan Bank Board was able to convince the administration that these "outposts" of the federal program deserved full public support.

The establishment of federal associations was aided in a substantial number of cases by Treasury subscriptions to capital. Often the government was by far the major contributor. For example, in the case of the First Federal Savings and Loan Association of Orlando, Florida, the government invested \$225,000 against a total private subscription of only \$75,957.<sup>17</sup> For the First Federal Savings and Loan Association of Hollywood, California, the proportion was \$75,000 against \$33,785.<sup>18</sup> In approximately two-thirds of the cases of Treasury investment reported at the end of 1934, the government's share was larger than the total of private subscriptions.<sup>19</sup>

The original amount of \$50,000,000 made available by Congress in 1933 for such subscription was augmented two years later by an authorization of \$300,000,000 from H.O.L.C. funds to be used for the purchase of full-paid income shares not only of federal associations but of state-chartered associations as well.<sup>20</sup> By the middle of 1938, more than two-thirds of the H.O.L.C. authorization had been invested, \$170,000,000 going to

<sup>17</sup> Federal Home Loan Bank Board, *Second Annual Report*, 1934, p. 113.

<sup>18</sup> *Ibid.*, p. 111.

<sup>19</sup> *Ibid.*, Exhibit D, pp. 108-136.

<sup>20</sup> 49 Stat. 297. The new funds might also be used for the purchase of Home Loan Bank debentures.

federal associations and only \$40,000,000 to state-chartered institutions.<sup>21</sup> These amounts are in addition, of course, to the original Treasury authorization of \$50,000,000 which had been subscribed exclusively to the federals.<sup>22</sup>

This thorough sponsoring of the federal savings and loan associations did not go unchallenged. Local competitors, particularly the savings banks, were outspoken in their opposition to the seeming partiality of the government. Federal associations, they contended, had been set up in areas already well supplied with mortgage agencies, and local investment was inadequate to assure stability and adequate responsibility. In December, 1936, the National Association of Supervisors of State Banks expressed itself as "gravely concerned" over promotional efforts of the federal government and the dangers of promiscuous chartering of new associations.<sup>23</sup>

Admittedly, new federal associations were approved at first in cities where mutual associations already existed. In some cases the number of charter shareholders was small, and their subscription of a few hundred dollars apiece was supplemented by altogether disproportionate government contributions. It is true that in the beginning a considerable part of the business of federal associations had to do with refinancing of mortgages other than their own,<sup>24</sup> and thus the portfolios of other local lenders were directly affected. In such states as New York and Massachusetts, where the mutual type of institution was well established, and where adequate legislation concerning such had long been in effect, there was special cause for opposition. In some other states, the supervisory authorities have been hostile toward the invasion of their prerogatives by national supervision and examination.

It cannot be said, however, that the promotion of the federal program has been conducted with a particularly heavy hand. The Home Loan Bank Board has made every effort to cooperate with state authorities, the federal charter offers few features not already adopted here and there in some of the states, and federal examination has proved much more exacting than had been the local examinations in many parts of the country. The federal investment program has now come practically to a close. Neither by their numbers nor by their assets are the federal associations

<sup>21</sup> Federal Home Loan Bank Board, *Sixth Annual Report*, 1937-38, p. 144.

<sup>22</sup> At the end of fiscal 1939, investments of the Treasury and the H.O.L.C. in federal associations alone amounted to \$217,025,500, or nearly 18 per cent of the entire capital of federal associations. Federal Home Loan Bank Board, *Seventh Annual Report*, 1938-39, exhibits 36 and 37, pp. 200-201.

<sup>23</sup> See *New York Times*, Dec. 10, 1936, 45: 1.

<sup>24</sup> Federal Home Loan Bank Board, *Third Annual Report*, Jan.-June, 1935, exhibit C, p. 36.

in a position to dominate the savings and loan field. Of approximately 9,000 savings and loan associations operating throughout the country, with close to six billion dollars in assets, the federals number only 1,400, with assets of a billion and a half dollars.<sup>25</sup> The federal associations have, however, carried on an active policy of lending and during 1939 accounted for the surprising proportion of 40 per cent of loans made by all savings and loan associations.<sup>26</sup> The results have been considered quite gratifying by the Home Loan Bank Board, and the Board has noted with satisfaction that the example set by the federals has had striking influence in introducing improved organization and procedures throughout the ranks of all the associations.<sup>27</sup>

One further element was necessary to fill out the national structure for the unification and strengthening of the savings and loan associations. This element was federal share insurance. Initially, share insurance was forced on the Administration by the logic of its own banking program. Deposit insurance, provided in 1933 for savings accounts in banks, had the immediate effect of drawing small savings away from the unprotected accounts of the associations. To counterbalance this effect, Title IV of the National Housing Act of 1934 provided a form of insurance up to \$5,000 for share accounts in approved institutions. The inclusion of share insurance as a part of the act which created the Federal Housing Administration was a clever strategic move, for it made more difficult an effective opposition to mortgage insurance by the savings and loan associations, and at the same time it avoided the appearance of extravagant federal concern for the welfare of the savings and loan associations alone.

The Federal Savings and Loan Insurance Corporation was established under the trusteeship of the Federal Home Loan Bank Board, and its initial capital was supplied by delivery of \$100,000,000 in H.O.L.C. bonds. Further income was to be derived from the premium payments and examination fees of insured institutions. All federal associations were required to become members. State-chartered associations and coöperative savings banks might qualify for its benefits provided they met certain requirements and submitted themselves to the Insurance Corporation's supervision. Share insurance could not be exactly comparable to deposit insurance, since the great part of savings and loan assets are invested in long-term loans and their liquid reserves are of nominal amount. The guarantee must cover the solvency of the institution, not the liquidity of its accounts. Therefore it was provided that shareholders in closed institutions should receive only 10 per cent of the amount of their insured account in spot cash. Of the remaining 90 per cent, they must accept one-half in one-year non-interest-bearing debentures of the Insurance Cor-

<sup>25</sup> *Federal Home Loan Bank Review*, Feb., 1940, p. 161.

<sup>26</sup> *Ibid.*, p. 160.

<sup>27</sup> See Federal Home Loan Bank Board, *Fourth Annual Report*, 1935-36, p. 28.



poration, and the other half in three-year debentures. It was considered that a three-year delay would at least place less strain on insurance reserves.

The provision of coverage was liberal, but the acceptance of share insurance has been in no way as complete as the acceptance of deposit insurance by the nation's banks. Beyond the 1,400 federal associations which were required to qualify, only some 800 associations have joined.<sup>28</sup> Since Home Loan Bank membership now includes 3,900 institutions, it can be seen that reserve facilities are still more sought after than insurance. Federal insurance has been of marked benefit in attracting investors, especially to new associations and to those which suffered severely in the crisis;<sup>29</sup> but many associations have been hesitant to accept the restrictions that insurance entails. Requirements concerning reserves, capital structure, and promotion and lending policies are rather strict, and the insurance premium of one-eighth of one per cent (originally one-fourth of one per cent) of insured accounts is not an inconsiderable levy. The Home Loan Bank Board is now making notable efforts to qualify further associations by assisting them to reorganize and merge, and by sponsoring local programs to prepare all the associations of a given community for insurance at once.<sup>30</sup> Each new member, if properly qualified, adds just that much strength to the national program and lengthens the arm of federal control as would be possible in no other way.

The risks of the program cannot be reduced to exact actuarial terms, and will of course depend on the strength of public supervision.<sup>31</sup> But if some form of credit insurance is inevitable, share insurance has definite advantages over the guarantee of individual mortgage loans. The former is secured by the entire assets of a lending institution, and its administration can be conducted in terms of general regulations and regular examinations without the need of an elaborate and extended structure of control.

With share insurance, federal charters, and central reserve facilities provided, it might appear that the savings and loan associations were pre-

<sup>28</sup> *Federal Home Loan Bank Review*, Feb., 1940, p. 162.

<sup>29</sup> During 1938 the rate of increase in accounts was as follows: For an identical group of 1,309 federal associations, 21.3 per cent; for an identical group of 547 insured state associations, 6.4 per cent; for an identical group of 901 non-insured associations, 0.5 per cent. Federal Home Loan Bank Board, *Seventh Annual Report*, 1938-39, p. 40.

<sup>30</sup> *Ibid.*, pp. 107-108.

<sup>31</sup> At the end of fiscal 1939, potential liabilities amounted to \$1,725,000,000, against which the Insurance Corporation had, in addition to its \$100,000,000 capital, approximately \$20,000,000 in surplus and reserves. *Ibid.*, p. 113. Through the fiscal 1939, it had been necessary for the Corporation to make settlements in only seven cases, to a gross amount of \$390,000. *Ibid.*, p. 112. However, during fiscal 1940, additional contributions were expected to reach approximately a million and a half dollars. *House Hearings on the Independent Offices Appropriation Bill for 1941*, p. 1149.

pared to assume a definite leadership in the field of home financing. But the Home Loan Bank Board's program would bear full fruit only after a period of some years. While that program was still struggling for recognition, it was destined to become overshadowed in public attention by the drive for immediate expansion in the essential construction industry. If the continuity of public policy appears to break abruptly here, this was because no source of private credit could now be neglected in the pursuit of increased housing activity, and because the most available credit was to be found, not with the savings and loan associations, but with the banks and the life insurance companies. Excess bank reserves were already becoming evident at the end of 1933, and this vast store of economic power was a tempting prize.

It was the National Housing Act of 1934, drafted chiefly by the President's economic advisers in the National Emergency Council, that offered an acceptable formula for an immediate expansion of private mortgage credit. In the congressional hearings on the act, it was made plain enough that the major participants in the program were expected to be, not the savings and loan associations, but the banks and mortgage and insurance companies.<sup>32</sup> This shift was possible because presumably a new safeguard of the public interest had now been devised in the control of the *form of mortgage agreement and security*. Safer lending policies would be achieved, not by subjecting mortgage institutions to direct federal control, but by attaching requirements to the offer of government insurance of new commitments. Since private capital lacked sufficient confidence to seek investment unaided, a sufficient public offer of underwriting could expect, at least for the time being, to bring a substantial part of new investment within the reach of public control.

The National Housing Act was finally approved in the closing hours of the congressional session of 1934 with the concerted backing of construction interests<sup>33</sup> and the building trades.<sup>34</sup> The savings and loan associations

<sup>32</sup> See statements before the Senate committee by Horace Russell, general counsel for the Federal Home Loan Bank Board, *Hearings*, p. 67, and by Assistant Secretary of the Treasury Eccles, *ibid.*, pp. 154, 156-7.

<sup>33</sup> For approval by the durable goods industries, see *New York Times*, May 21, 1934, 33: 1, May 24, 1934, 8: 3.

<sup>34</sup> William Green, of the American Federation of Labor, was active in his support of the act. For a statement by him, see *Congressional Record*, Vol. 78, p. 11213. As for the realty interests, their position was somewhat peculiar. In the early months of 1934, the National Association of Real Estate Boards had once again raised the issue of a federal mortgage discount bank for the purchase from individuals as well as institutions of both home and rental property mortgages. *National Real Estate Journal*, Mar., 1934, p. 51. The realty group was not entirely satisfied with the limited provisions of the Housing Bill, but accepted it as at least a first step. *Ibid.*, June, 1934, p. 11, and July, 1934, p. 15. Not until late in 1934 did the National Association declare its formal approval, and then only under the threat of expanded P.W.A. low-rent housing. See *New York Times*, Nov. 25, 1934, 2: 5.

gained share insurance as their stake in the legislation, but the associations recognized very clearly that control was already slipping from their hands. Mortgage rates under F.H.A. terms were to be set at  $5\frac{1}{2}$  per cent (if we include the one-half of one per cent service charge at first allowed the mortgagee institution). There was every indication that the Administration would make good its first opportunity to drive this rate still lower if mortgage insurance should be accepted favorably. Such low interest rates would bear heavily on the dividend policies of the savings and loan associations.

In the last few years, the terms of mortgage insurance have become familiar to prospective home purchasers in every community of the nation.<sup>35</sup> Property valuations are determined after inspection by local F.H.A. agents. In the case of new homes, regular inspections are made during construction to assure compliance with standard specifications. Originally, insured loans were limited to 80 per cent of value and 20-year maturity, but after the recession of 1937 these terms were liberalized as an added stimulus to construction.<sup>36</sup> Now, certain new properties in the range of lower cost may be mortgaged to 90 per cent of value and for as long as 25 years.

Insurance of mortgages against default by borrowers is not in terms of cash payments. Mortgagee institutions are required to accept interest-bearing debentures upon transfer of foreclosed properties to the Federal Housing Administrator. The costs of foreclosure proceedings are borne by the lender, and debentures do not mature until after the final due-date of the original mortgage. Thus the lender is still required to share the risks of default. But mortgage institutions can at least count on converting defaulted loans into securities that will bear an even better rate than government bonds. Furthermore—and this has been an important consideration among commercial banks and insurance companies—F.H.A. mortgages are sufficiently standardized in terms and security to be bought and sold among F.H.A.-approved institutions on an almost nation-wide market as the circumstances of individual portfolios may dictate. At first the R.F.C. Mortgage Company, and more recently the Federal National Mortgage Association (both wholly government agencies), facilitated this exchange by its standing offer to purchase F.H.A. mortgages at stated rates from all approved mortgage institutions. To the end of 1939, nearly seven hundred million dollars worth of mortgages were resold by original lenders, certain life insurance companies being the largest takers.<sup>37</sup> Federal

<sup>35</sup> No account can be given here of F.H.A. insurance of modernization loans under Title I of the act. However, it is important to note that in the beginning F.H.A. commitments mainly concerned small short-term modernization and repair loans on very liberal terms. A favorable response by home-owners and by lending institutions opened the way for popular acceptance of the mortgage insurance program itself.

<sup>36</sup> The new provisions will be found in an act of Feb. 3, 1938, 52 Stat. 8.

<sup>37</sup> *Insured Mortgage Portfolio*, April, 1940, p. 26.

purchases have represented a relatively small proportion of the whole.<sup>38</sup>

Today, the cumulative amount of F.H.A. insured home-loans is well beyond the two-billion-dollar mark. In this rather spectacular progress, certain facts are quite evident. The plan has been fostered by interest in the revival of construction, not by the credit institutions. The savings and loan associations have campaigned vigorously against mortgage insurance as a whole and against the progressive liberalization of its terms. The banks and the insurance companies themselves have taken little active part in the controversies except for an occasional lament over the shaving down of equities. As to the decline in interest rates, this has been accepted as inevitable. When F.H.A. rates, at the end of July, 1939, were cut from five to four and one-half per cent, the reduction brought forth almost no comment from circles of large finance. That the banks and the insurance companies have participated so heavily in the program is explained by the almost complete poverty of alternative investment open to these institutions. Whatever may be their judgment as to the wisdom of such easy mortgage terms, they stand in no position to carp at the government's provisions.

In the second place, it is evident that the original impetus for mortgage insurance did not come spontaneously from prospective home-owners. It is true that F.H.A. terms have brought new housing to groups somewhat farther down the income scale than formerly. It is true, likewise, that borrowers had welcomed the effect of H.O.L.C. refinancing in reducing mortgage rates on existing debts. But it was certainly not the borrowers who fought the fight for more accessible home ownership. Their support was achieved only by a thorough and calculated campaign of promotion. Small householders were still suffering from the effects of the depression and had to be convinced of the opportunities offered by the circumstances of cheap credit.

The tractableness of borrowers and the almost fatalistic acquiescence of large capital played directly into the hands of the construction interests which from the beginning had been most insistent for a building-recovery program. Private housing was much preferred by realty groups to slum clearance projects, with the disturbing effects the latter were likely to have on prevailing rent structures. Building trades unions were prepared to encourage both public and private housing; their attitude was entirely one of opportunism; employment in house-building was the object, the source of funds and the character of the occupants being of secondary importance.

The leadership of such groups in determining the character of mortgage finance is a most dubious one. Neither the subdivider, the supplier of

<sup>38</sup> At the end of 1939, federal agencies held F.H.A. mortgages aggregating \$152,715,654 in original amount, or 8.5 per cent of all insured mortgages. *Ibid.*, p. 3.

materials, nor the employer of labor need be immediately concerned with the ultimate stability of the debts being contracted. None of these elements has been prepared to make any substantial concessions of its own in the program of reconstruction. What hopes there had been of reduced building labor costs were unrealized, since the continued construction of custom-built dwellings by local contractors allowed labor no other security than that of a high hourly wage. The wasteful sub-contract system of building organization, the restrictive building codes established by local ordinance in the benefit of favored groups, the collusion and price maintenance of building material concerns since exposed in federal prosecutions, were not brought into contest.

To satisfy the demand for recovery and to maintain the dominance of mortgage insurance, the Administration has been compelled step by step to relax its requirements and to extend the scope of the program. On the one hand, the conception of a strictly self-supporting insurance fund has been abandoned. Treasury guarantee of F.H.A. debentures, which in the beginning was intended as a strictly temporary measure to insure early adoption, has been extended indefinitely. On the other hand, the benefits of insurance were extended by the recession amendments of 1938 to loans on leaner equities and at reduced premium charges. Furthermore, the amendments of 1938 made really effective for the first time provisions for insuring large-scale rental projects conducted by limited-dividend corporations. Mortgage insurance is no longer concerned overwhelmingly with individual homes and now covers more than one hundred million dollars of debts on apartment developments.<sup>39</sup> These latter projects concern large individual commitments sponsored by commercial developers rather than by prospective owner-occupants. It is significant to note how easily a plan like mortgage insurance, fostered originally in the name of home ownership, can be extended to cover commercial projects as soon as the expansion of rental properties again becomes feasible. If the government was to establish any general control in the mortgage market through mortgage insurance, it was obvious that rental properties could not be excluded. Thus, in spite of increased hazards, such properties have been brought under F.H.A. terms.<sup>40</sup>

It is true that F.H.A. structural and development specifications have had striking effect in curbing the jerrybuilding and the exploitive realty promotions of former days. The efforts of the Federal Housing Administration in this direction are most noteworthy. But this agency is without authority to cope with the more fundamental shortcomings of building

<sup>39</sup> At the end of 1939, premium-paying mortgages on rental and group housing projects amounted to \$113,934,775. There were, in addition, outstanding commitments of \$25,437,500. *Insured Mortgage Portfolio*, Feb., 1940, p. 17.

<sup>40</sup> See, however, the favorable record thus far of F.H.A. rental projects. *Ibid.*, Apr., 1940, pp. 11-12, 24.

and realty organization in this country. Furthermore, the F.H.A. plan cannot hope to become indispensable to lending institutions. Of course, some holdings of insured mortgage paper may continue to be desirable if facilities remain for easy reassignment of such assets. But it is not at all certain that the withholding of mortgage insurance could curb an unjustified expansion with the same efficiency as its extension has brought forth a wanted recovery. Lenders can escape all too easily to uninsured lending and can still select what part of their portfolios they wish to submit for guarantee.

Certainly the far-flung Federal Housing Administration is at best an unwieldy and difficult organization.<sup>41</sup> It is required to operate at the periphery rather than at the center of the lending system. Uniform lending practice could much better be accomplished if there were means available for setting out mortgage specifications in general terms by some national authority supervising all lending institutions. At present, F.H.A. property appraisals and loan approval must duplicate all the detailed steps of loan-closing normally handled by the lending institutions themselves. Yet the abandonment of mortgage insurance would leave the organization and facilities of American mortgage-lending hardly more effective than they were before.

If the chief objectives of a permanent organization in this field should be stated as uniformity of lending practice through central supervision, and a sound secondary source of national credit on the security of mortgage paper, then certainly it was not the Federal Housing Administration but the Federal Home Loan Bank Board that most nearly approached the basic issues. But the Bank Board's program failed to meet the needs of a dispersed lending system and became isolated. The Board could do little to adjust the savings and loan associations to insured lending, and with the principles of mortgage insurance sweeping the country it was helpless to broaden the base of its membership. Even its greatest permanent assets, conservative policy and unpretentiousness, the Board now seems ready to sacrifice in an attempt to keep step in the rapid pace of recovery lending. Since 1938, the Home Loan Bank Board has urged certain significant amendments to its basic acts.<sup>42</sup> It is proposed to extend the lending authority of federal associations to include loans not only on home properties but on larger rental properties and apartments, provided the latter commitments do not exceed 30 per cent of an association's total loans. The Home Loan Banks would be permitted to accept such mortgages, if not in excess of \$100,000, as collateral against advances. Here is

<sup>41</sup> The F.H.A. operates more than 100 field offices. It employs a staff of some 4,000 employees. Currently, its annual administrative expenses exceed \$13,000,000. *House Hearings on the Independent Offices Appropriation Bill for 1941*, p. 1091.

<sup>42</sup> See H. R. 6971, 76th Cong.

an unmistakable sign that the associations are not satisfied to remain exclusively home-lenders and intend to expand their activity into the field of commercial developments. But further, it is proposed to reduce share insurance premiums from one-eighth to one-twelfth of one per cent to correspond to the rate charged by the Federal Deposit Insurance Corporation, and to permit the Savings and Loan Insurance Corporation, in its discretion, to meet claims in full in cash. Finally, the Treasury would be authorized to purchase insurance debentures without limit as to amount.

The intent of such a program is evident. The associations must now compete for investment with the banks to a degree that did not exist before the introduction of mortgage insurance. To continue their development, they are attempting to expand their functions and to create for their shareholders' accounts a liquidity approaching that of the savings deposits of their competitors. That such proposals have aroused the vigorous opposition of the savings banks and the Federal Reserve System goes without saying.<sup>43</sup> In this instance, the housing program seemed to be leading to adjustments that concerned primarily the lenders themselves. The issue was now one, not of promoting building activity, but of balancing the relative position in that activity of the various types of mortgage institutions. The construction interests and the Federal Housing Administration remained silent. Nevertheless, it was plainly the insured mortgage program, with its government guarantee, that had brought on the contest.

It is interesting to note that opposition to the amendments resulted not so much from a general conviction that the adjusted terms were unsound as from the hostility of definitely competing groups, themselves dependent on government underwriting but jealous of the position that they had come to hold in this regard. The savings banks contended that the savings and loan associations were asking the government to assure the practical liquidity of share investment without subjecting themselves to any of the restrictions required of deposit institutions. Thus, they claimed, a "third banking system" was being formed that would invade the "proper sphere" of the savings banks.

Here the contest rests for the present, with little prospect in sight except for continued small adjustments of the balance, each move to be dictated by its relation to expanded construction activity. As long as the savings and loan program and mortgage insurance continue concurrently, the two federal agencies must deal with each other at arm's length.

<sup>43</sup> The statements presented before the House committee at hearings on the proposed amendments give every indication of concerted action among the banking interests in preparing their case. See *House Hearings on H. R. 5535 (superseded by H. R. 6971), Seventy-sixth Congress, First Session, 1939.*

Administrative consolidation is hardly feasible, since there is so little common ground either of functions or of policies. The grouping of the Federal Housing Administration and the Home Loan Bank Board's agencies, along with certain other government credit agencies, in a new Federal Loan Agency has accomplished no actual coördination of functions. The staff of the Home Loan Bank Board remains frankly skeptical of the principles embodied in mortgage insurance and has made little attempt to join its efforts with those of the F.H.A., even at those points where collaboration would be most effective. Both agencies have taken it upon themselves separately to provide the basic statistical data on housing finance to meet a need for official information that has long been neglected. Field studies of neighborhood value-trends in some cases have covered identical areas. Yet each of the two agencies, in its acknowledgment of helpful relations with other government offices, make no mention of the efforts of the other. In the management of acquired properties, there are numerous untapped opportunities for collaboration between H.O.L.C. and F.H.A. field officers, and these opportunities will multiply as the load of F.H.A. property management increases.

It is unfortunate that the government's program for housing finance has become so bifurcated. Yet, as long as the American system of mortgage-holding remains so dispersed, no other result could easily follow. Since it is obvious that commercial banks and the large life insurance companies must find an outlet in this field for at least a part of their investment funds, home-mortgage lending cannot in this country become an entirely specialized function. The real need is for a thorough standardization of mortgage terms and realty practice to provide uniform and secure investment paper as the basic materials for a national system of secondary finance. But we have attempted to dodge the issues that are most uncomfortable and disturbing. Recent attempts by federal and state governments to end monopolistic and predatory practices in the building supply industries and among the building trades unions appear to be only half-hearted. States and municipalities have moved all too slowly toward an effective local regulation of realty promotions. Control of the investment policies of life insurance and mortgage companies, commercial banks, and state-chartered savings and loan associations is still haphazard. And there is a surprising lack of collaboration even among national agencies such as the Federal Reserve System, the national bank authorities, and the Federal Home Loan Bank Board.

In an immediate sense, it was undoubtedly a clever move on the part of the Administration to draw together all the interests in recovery under such a federally supervised program as that of mortgage insurance, which could illustrate new principles of lending where these would be most evident to all. But we should be most credulous to suppose that safe and ap-



proved practice will be adopted voluntarily after only a brief period of schooling by the Federal Housing Administration. The federal program has built a superstructure to a system that already had demonstrated its weaknesses. It is a great misfortune that those who are acting as the architects of the present plan have neglected to lay their foundations in more reliable credit, realty, and construction support.

DAVID M. FRENCH.

*Mills College.*

**Judicial Elections and Partisan Endorsement of Judicial Candidates in Minnesota.** All judicial officers in the state of Minnesota, including the chief justice and six associate justices of the supreme court and fifty judges in the district courts, are required to be nominated and elected without partisan designation. Judicial nominations and elections were made non-partisan by the election law of 1912.<sup>1</sup> During a quarter of a century, the nonpartisan ballot has given Minnesota the services of an exceptionally well qualified bench, and sentiment is practically unanimous in favor of continuing this method of selecting judges.

Once elevated to the bench, a Minnesota judge has a good chance of continuing in that capacity as long as he wishes to serve. Supreme court justices have been regularly reelected; so that their tenure has been, for all practical purposes, the same as that of federal judges. Three of the present members of the supreme court have been elected once, two have been elected twice, one three times, and one four times. With one exception, the supreme court justices since 1912 have retired from office by resignation or death.

Of the eighty-four district court judges who have served since 1912, only four have been defeated at the polls when seeking reelection. At the present time, thirty-six of the state's fifty district court judges have been elected two or more times, and twenty-three have been elected three or more times. The following table shows the number of times the present members of the district court bench have been elected:

<i>Number of judges</i>	<i>Number of times elected</i>
14	1
11	2
13	3
6	4
2	5
1	6
1	7

<sup>1</sup> *Minn. Session Laws* (1912), Ch. 2, Sec. 2. This article is based upon a study of pertinent statutes and election returns and personal inquiry among present and past members of the bench and bar.

The constant reelection of judges means that the average age of incumbents tends to be high. Consequently, deaths in office and voluntary retirements on account of illness or old age have been relatively frequent. The law provided that vacancies in both the supreme court and the district courts shall be filled by appointments by the governor for the unexpired terms.<sup>2</sup> The result has been that a large majority of the judges have been brought into office in the first instance by executive appointment.

The four chief justices of the supreme court who have served since 1912 were all appointed in the first instance by the governor. Eight of the ten associate justices who have served in the same period came into office in the same way.<sup>3</sup> Executive appointment has not been used as a means to defeat the purposes of the nonpartisan ballot. Successive governors have risen above narrow partisan considerations to select well-qualified lawyers enjoying the confidence of the bar and public. The general popular approval of the appointments made by the governors is shown by the fact that since 1912, when the nonpartisan ballot was adopted, there has been only one instance in which a supreme court justice appointed by the governor was rejected by the people in the next ensuing general election.<sup>4</sup>

All seven present members of the supreme court came into office originally by appointment by the governor. Of the fifty state district court judges now on the bench, thirty-one were originally appointed by the governor. Four other members of the present district court bench received previous appointments as municipal judges or judges of probate, and were subsequently elected as district court judges. Thus practically three-fourths of the present judges of the district courts came to their present positions, not by election, but by appointment.

In Minnesota, the nomination and election of judges on nonpartisan ballots has actually been a plan of filling judicial posts by executive appointment, with popular ratification. In view of the record, it would hardly be logical to argue that Minnesota would get judges of a higher caliber and better qualifications if she discarded her system of popular election by nonpartisan ballot in favor of gubernatorial appointment.

An interesting feature of judicial campaigns is the attitude of the State Bar Association. The Association has usually endorsed all the incumbent supreme court justices who were running for reelection, regardless of their party affiliations. The bar has taken the position that the incumbents should be retained, even though a majority of its members may be strongly opposed to the policies of certain incumbent judges.<sup>5</sup>

<sup>2</sup> Minn. Const., Art. VI, Sec. 10.

<sup>3</sup> The exceptions were Justices Hallam and Quinn, who were elected directly to the supreme court in 1912 and 1916, respectively, without having been previously appointed by the governor.

<sup>4</sup> The exception was Justice Schaller, who was defeated in 1916.

<sup>5</sup> The sentiment of the bar is, however, sometimes revealed in the size of the vote

The justices of the supreme court of Minnesota have adopted a rather interesting method of campaigning for reelection, which has contributed to their permanency of tenure. For many years it has been the practice of the judges seeking reelection to campaign together, irrespective of their partisan affiliations. The result has been that it is a case of the incumbents against the field. From a practical standpoint, the scheme has been very successful. Since the enactment in 1912 of the law extending the non-partisan ballot to judicial primaries and elections, this system of "one for all and all for one" has been almost unbeatable. Thus at each general election, the two or three justices who are up for reelection, or for the first election after appointment, have always had their names appear together in newspaper advertisements and campaign literature. In every respect they have made common cause together.

Beginning with 1930, when the Farmer-Labor party first captured the governorship, it soon became apparent that there would be some attempt to break up these campaign combinations, which allowed liberal and conservative judges alike to unite for election purposes. The established practice received its first test in 1934, when Chief Justice John P. Devaney and Associate Justice Julius Olson, both appointees of the late Governor Floyd B. Olson, were up for election. Neither the liberal tendencies of these judges nor their sympathetic attitude toward the policies of the Farmer-Labor party in Minnesota was any secret; yet both campaigned with Associate Justice Hilton, a Republican who was up for reelection. In spite of protests from the leaders of the Farmer-Labor party, Chief Justice Devaney insisted that all three judges campaign together, regardless of the differences in party alignment.

No question was raised in the general election of 1936, because neither of the incumbents running for reelection was an adherent of the Farmer-Labor party. In 1938, however, the situation closely paralleled that of 1934. Both Chief Justice Gallagher and Associate Justice Harry Peterson were endorsed by the state convention of the Farmer-Labor party. The convention also endorsed a third candidate, as conclusive evidence that the party was opposed to the reelection of the incumbent Justice Loring (Republican). This latter endorsement also showed that the Farmer-Labor party was opposed to the practice of having judges whose sympathies were with the Farmer-Labor party campaign with men not committed to the party's policies.

Once again, however, the supreme court justices paid little heed to the wishes and actions of the Farmer-Labor party. In 1938, the three above

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on endorsement. In 1938, the State Bar Association endorsed Justice Loring (Republican) by a vote of 1,723 and Justice Peterson (Farmer-Laborite) by a vote of 977. At the general election, Justice Peterson received 528,456 votes to Justice Loring's 407,237.

mentioned justices formed an alliance as close as any established by their predecessors, and as usual were successful at the polls. The effects, then, of partisan endorsements for candidates for election to the supreme court of Minnesota have so far been negligible.

The nonpartisan ballot was doubtless a hindrance to the Farmer-Labor party during its rapid rise to power in so far as it tended to favor the incumbent judges. With partisan designation for judicial candidates, Minnesota's experience might have been similar to that of the neighboring state of Iowa. One accompaniment of the replacement in Iowa of the long-established Republican administration with a Democratic one in 1932 was a complete renewal of the composition of the supreme court. With partisan designation for judicial candidates, Democratic judges were swept into office along with the rest of the victorious ticket. In 1932, three Democrats were elected to the supreme court of Iowa; three more were elected in 1934, and three more in 1936. On the other hand, the Farmer-Labor party might have suffered a still more serious defeat in 1938, if its two candidates for the supreme court had been required to run on a partisan ballot; for in that election the party ticket was emphatically rejected by the people.

While endorsements of candidates for the supreme court by the Farmer-Labor party have had little effect on the outcome of the elections, the same does not hold true for district court elections. An examination of the election returns for district court judges reveals that incumbent judges met with more opposition after 1930, when the Farmer-Labor party had its first great success, than before that date. In 1926, one-half of the fifteen incumbent judges who were up for election were unopposed, while in 1934, only one-sixth of the eighteen incumbents had no opposition. Much of the opposition with which incumbent judges have been forced to contend has come from candidates who had Farmer-Labor endorsement. The incumbent judges in the judicial districts which include the three metropolitan centers (Minneapolis, St. Paul, and Duluth) are more frequently opposed at the polls than their colleagues elsewhere, for the three cities are the Farmer-Labor party's greatest strongholds.

Not only have the district court judges had more opposition in recent years, but the opposition has also been of a more formidable character. Of the incumbent judges on the bench who were up for election in 1930, practically all were elected with comfortable margins; but several of these same judges narrowly escaped defeat in 1936. In Duluth, which is the largest city in a strong Farmer-Labor area, a veteran judge was defeated by a Farmer-Labor endorsed candidate.<sup>6</sup> In Minneapolis in the same year,

<sup>6</sup> The defeat of Judge Grannis of Duluth in 1936 marks the fourth time that an incumbent district court judge has been defeated in the last twenty years.

Farmer-Labor endorsements ensured election for a judge who had been appointed to fill a vacancy, and nearly spelled defeat for other incumbent judges.

The practice whereby supreme court justices campaign together goes far to nullify the effect of party endorsement. When the justices of the supreme court who have received the endorsement of the Farmer-Labor party insist upon campaigning with another incumbent whose defeat is desired by that party, they in effect accept the party's blessing for themselves, but reject the endorsement of another Farmer-Labor candidate to oppose their incumbent colleague. In spite of the fact that similar practices have developed in district court elections, notably in the metropolitan districts, Farmer-Labor endorsements have been considerably more effective in these contests.

One reason why partisan endorsements for candidates for the district courts have been more effective is that more active campaigns are carried on within the judicial districts. The Farmer-Labor party has not hesitated to endorse candidates for the supreme court; but once it has come out with a public endorsement for a supreme court candidate, little is done by way of state-wide publicity. This is explained in part by the fact that it is difficult to carry on an active state-wide campaign for a candidate who will have no party designation after his name on the ballot. It is also quite possible that the Farmer-Labor party has been reluctant to campaign too openly for a supreme court candidate because in so doing it lays itself open to attacks from both the Democratic and Republican parties on the charge that such action is really circumventing the law relating to nonpartisanship in judicial elections.

In district court elections, however, the Farmer-Labor party wages active campaigns for the judicial candidates that it has endorsed. Printed cards are distributed bearing the picture of the candidate in addition to information showing that the candidate is affiliated with the Farmer-Labor party and has its official sanction. These campaigning methods have proved effective, especially in the metropolitan areas. The experience tends to show that the Farmer-Labor party can campaign openly for its judicial candidates within a district, with little of the criticism that doubtless would fall upon it if it attempted the same on a state-wide scale.

Spokesmen of both the Republican and Democratic parties in Minnesota have made frequent protests against the practice of endorsing judicial candidates. Indeed, such action has been attacked by party leaders as being not only contrary to the spirit of the nonpartisan election law, but actually a violation of the statute. The latter interpretation, however, seems to be erroneous in the light of a recent decision of the supreme court of Minnesota on this very question. In *Moon vs. Halver-*

son,<sup>7</sup> the court held that the nonpartisan elections law<sup>8</sup> does not prohibit a candidate for a nonpartisan elective office from procuring the endorsement and support of his candidacy from a political party. "In our democratic system of government," said the court, "there is nothing wrong in groups or political parties doing their utmost *within the scope of propriety*<sup>9</sup> to advance the candidacy of an individual satisfactory to them. The candidate for the nonpartisan office is not thereby rendered a party candidate. Rather he is an individual supported by a party and free to encourage support from other sources, political and non-political."

In this case, however, Justices Loring and Olson,<sup>10</sup> while concurring in the decision, took exception to the language in the opinion which tended "to place the stamp of this court's approval on party endorsements of non-political candidates, especially as to those endorsements of judicial candidates." Speaking for the minority, Mr. Justice Loring seized upon the opportunity to deliver a disquisition on the subject and said: "I realize that the statute does not forbid party endorsements of any non-political candidate. Nevertheless . . . their impropriety in the case of judicial candidates seems most obvious."

Various proposals have recently been advanced to curb party endorsements, such as to make it an offense to "distribute tickets or other sample ballots" containing the name of endorsed candidates for the judiciary. As yet, however, none of these proposals has been adopted.

On the whole, it may be said that most of the evils which might be expected from a system of popular judicial elections do not exist in Minnesota. While the nonpartisan ballot gives the incumbent judges a decided advantage, nevertheless some flexibility is given to the system by reason of the fact that more than three-fourths of the judges are appointed in the first instance. Thus it is possible for a governor who has received a mandate from the people to make judicial appointments acceptable to them. In this way it is possible to appoint men to the bench who reflect the views of the appointing power and his party with virtual assurance that they will be reelected. Yet, at the same time, the system militates against an entire turnover of the judiciary in rapid-fire succession, which may easily be the case where judges are elected on a partisan ballot.

It is difficult to say what attitude the Farmer-Labor party will take toward endorsement of judicial candidates in the future. Quite possibly it will continue to make endorsements, especially in those districts in which the party is strongest. In any event, it must be conceded that the use of

<sup>7</sup> Minn. Sup. Ct., Nov., 1939. This case involved the office of register of deeds, which by statute is a nonpartisan office, the candidates for it being placed upon the ballot without party designation.

<sup>8</sup> *Mason's Minn. Statutes*, Vol. I, Sec. 294 (1927).

<sup>9</sup> Italics in original.

<sup>10</sup> Justice Loring is a Republican and Justice Olson is a Farmer-Laborite.

the endorsement to nullify the effect of the nonpartisan ballot has been an effective weapon in district court elections, and may likewise prove effective in supreme court elections if the Farmer-Labor party succeeds in developing more discipline and control within its own ranks. It is also safe to assume that the endorsement of judicial candidates will be more frequent during years when the Farmer-Labor party is riding high in popularity than in years when the party's electoral strength is at a low ebb.

MALCOLM C. MOOS.

*University of California at Los Angeles.*

## PUBLIC ADMINISTRATION

**Another Chapter in Michigan Civil Service Reform.** The civil service scene in Michigan has changed so rapidly in the last few years that it has been difficult for persons in other areas to keep abreast of developments. Thus, while in 1936 Michigan knew little of merit in public employment, 1937 found her in the vanguard of the reform movement. In that year, the recommendations of a study commission were embodied in a comprehensive civil service system by a Democratic administration. The year 1939 brought an almost complete reversal of policy with the passage of a Republican "ripper" act. Today another development is in the process of maturing. A civil service amendment to the state constitution was adopted in the November election of 1940.

It is not the purpose of this article to review the details of the history of Michigan's civil service movement, for this has been done elsewhere.<sup>1</sup> Suffice it to say that Michigan's experience with spoils politics was neither better nor worse than that of other jurisdictions; the recommendations of the Civil Service Study Commission, of which Dr. James K. Pollock was chairman, are now well known; the excellence of the state's merit system under William Brownrigg has also been generally recognized.<sup>2</sup>

However, three developments remain to be discussed: first, the contents of the "ripper" legislation; second, the effects of that legislation upon the present personnel situation; third, the proposed constitutional amendment.

The civil service act passed by the Michigan legislature in 1939 contained a number of devastating provisions. In the first place, it sharply curtailed the classified service. In the second place, it attempted to make full-time officials of the members of the Civil Service Commission instead of leaving administrative authority in the hands of the director. Third, the agency's appropriation was so reduced as to necessitate a serious reduction in its staff, with consequent decrease in the number of services performed. Fourth, the legislation provided for increased preference for veterans and a very substantial preference for former state employees. There were also a number of other changes which served to weaken the central personnel agency.

Accompanying the legislature's attack upon civil service were a series of executive actions designed to accomplish the same end. The most serious was the replacement of all members of the original Civil Service Commission by persons who had been involved in partisan political activities, and whose attitudes toward civil service were either indifferent or an-

<sup>1</sup> See the author's article in *Personnel Administration*, Vol. 3, No. 4 (Dec., 1939).

<sup>2</sup> James K. Pollock, "Michigan's First Year of Civil Service," *National Municipal Review*, Vol. 28, No. 1 (Jan., 1939).



tagonistic. With this departure of the original commission came lackadaisical support for the basic principle of merit in selection.

At the same time, the governor's office tacitly condoned the extensive requests made by department heads for broadening the definitions of the types of work exempted under the terms of both the 1937 and the 1939 acts, so as unnecessarily to expand the unclassified service. It may now confidently be said that these strained definitions were responsible for at least 20 per cent of present exemptions from the classified service. The attitude of the "front office" was further illustrated, of course, when the governor refused to veto the "ripper" act.

As a result of these legislative and executive actions, the entire system suffered tremendously. One of the most apparent of the changes lay in the size and character of the revised classified service. In March, 1940, the classified service constituted but 51.1 per cent of the total service, as contrasted with 90.7 per cent in January, 1939. Again, it is significant that of the ten hierarchical levels into which the whole state service is divided, the process of declassification fell the hardest upon the upper five. Thus, the percentage of the whole classified service which fell into the fifth group from the top was reduced by one-half, and similar reductions resulted from declassification in the other higher brackets. Again, the facts show that in 1938 14.5 per cent of the positions in the classified service were in the salary levels above \$1,800, whereas in 1940 only 9.6 per cent of the classified positions fell in those levels. The general tendency has been to bunch the classified positions into the salary range from \$1,080 to \$1,500 per year.

The extent to which this process of declassification, as well as the general process of tinkering with the state classified service, has destroyed the service's career aspects is illustrated by the reasons which former employees have indicated for their separation from the state service. In 1939, 1,232 persons resigned from the classified service. Two hundred and sixty-four, or 21.4 per cent, of these indicated that they were leaving "to accept a position with a better future"; 220, or 17.9 per cent, left "to accept a position with a higher salary"; 41, or 3.3 per cent, indicated "uncertainty of the job" as their reason for resigning; and 21 listed "unsatisfactory working conditions" as the cause. Thus, a total of 506, or 45.9 per cent, directly attributed their resignations to the unsettled conditions of state employment. Here is specific and rather eloquent confirmation of the fact that reduction of the classified service, political dismissals, and inadequate compensation have all combined to make the state service far less attractive than it can afford to be if it is to be a career service composed of well trained and satisfied employees.

Further consequences of this process of declassification are manifold. For example, personal service costs in 1939 were \$2,777,832.48 higher

than in 1938, although the state employed an average of 371 fewer per month in 1939 than in 1938. The consequences of this process of declassification are illustrated, too, in the increased personnel turnover not only in the state service as a whole but in the classified service itself. In 1936, the Civil Service Study Commission discovered that before the inauguration of a system of civil service, personnel turnover amounted to 17.7<sup>3</sup> per cent. In 1939 (after the passage of the "ripper"), the personnel turnover in the classified service alone amounted to 21 per cent, while the turnover in the whole state service totaled 27.5 per cent. The unnecessary cost of this increase is, of course, tremendous.

One of the most potentially vicious features of the "ripper" act was the substantial preference which it granted to persons having previous state employment. The act provided "that each person competing in any test who has had four years' previous service with the state in the same or in any similar class of employment shall be given an earned credit of 10 per cent and if, at any time, he had more than four years of such service a 2 per cent additional earned credit for each additional year of such service, such earned credit for previous service in no event, however, to exceed a total of 60 per cent." There can be no question but that any measure contemplating a 60 per cent preference for previous state service is decidedly incompatible with the principle of merit in state employment. Fortunately, this provision has not as yet been extensively employed by persons seeking state appointments. Furthermore, the deleterious effect of such a provision has been considerably mitigated by reason of the fact that a competent staff has interpreted the credit as being available only to those persons who first pass the examination without its aid. In other hands, it might very well prove unfortunate.

It should be understood also that the compensation plan established in 1937 has never been revised and, to all indications, is now seriously outdated. Wage scales in an industrial area such as Michigan change rapidly, and for the state to fail to adjust to these conditions inevitably results in either an injustice to the taxpayer or a reduction of the quality of state personnel. That the latter is probably occurring in Michigan today is indicated by the turnover figures previously referred to.

Again, attention should be called to the fact that the state classification plan prepared in 1937 has not been revised and is similarly antiquated in many important respects. As a consequence of its inadequacies, many department heads have reacted against the whole concept of a central personnel agency selecting employees on the basis of merit.

Finally, it should be pointed out that the present Civil Service Commission is operating on a budget of less than shoestring proportions. In the first year of its operation (1938), the Civil Service Department spent

<sup>3</sup> *Report of Civil Service Study Commission* (Lansing, 1936), p. 43.

a sum of \$203,756.<sup>4</sup> In painful contrast with this is the 1939 legislative appropriation of \$75,000 for each year of the biennium. During the fiscal year ending June 30, 1940, the Commission spent approximately \$103,000, because it had been granted additional funds by the Emergency Appropriations Commission. Whether or not it will be possible for it to operate during the current year on its reduced appropriation is a very serious question. As a result of the reduction in appropriation, the Civil Service Department's staff has been reduced from about 100 to only 39 persons, only 12 of whom may be said to be technicians.

In short, the facts of the situation indicate that the present civil service picture in Michigan is much less satisfactory than that existing in 1938. It is necessary that these facts be kept in mind if the observer is to understand the present reform effort; for it was with this background that civil service advocates in Michigan drafted the recently adopted constitutional amendment.

In calculating the strategy of reform, there are those who insist that it is best to work within the framework of an existing political situation by inducing executive and legislature to accept merit principles by persuasive rather than by coercive methods. Such persons remind us that reform is a long-term program, and that, to be satisfactory, it must have the support of all of the political factors within the situation. To these persons all coercive measures such as constitutional mandates violate the basic psychological principle inherent in their own approach.

In weighing the facts of the situation, the Michigan proponents of the merit system gave careful consideration to this point of view. Many of them were personally inclined to prefer the type of action which was implicit in it; yet they could not but be impressed by the history of similar efforts in other jurisdictions. After careful consideration, it seemed to them that reform, for the most part, follows from determined and decisive public action rather than from piecemeal educational efforts.

In analyzing their own and other citizens' organizations, these people were obliged to conclude that probably the reason for this type of pattern of the reform curve lay in the nature of their own organization. In other words, it seemed to them that citizen reform movements gathered momentum slowly, built up to a psychological peak with the realization of the reform, and then dwindled into ineffective remnants. As they saw the problem, a successful reform movement consists of a series of such cycles separated from one another by a number of years of relative inactivity. Theirs was reform by the spiral method. A program calling for sustained educational effort on the part of a citizens' organization over a long period of years seemed to them to miss the point of the lesson of the history of American popular movements.

<sup>4</sup> Pollock, *op. cit.*, p. 35.

The amendment drafted was particularly designed to be more nearly self-executing than any civil service amendment in America today. It is custom-built to the psychological pattern of this reform movement; to disagree with it in part is to disagree with that pattern, and to disagree with that pattern is to disapprove of the structure of the amendment itself.

Specifically, the amendment first describes the classified service, which includes "all positions in the state service except those filled by popular election, heads of departments, members of boards and commissions, employees of courts of record, of the legislature, of the higher educational institutions recognized by the constitution, all persons in the military and naval forces of the state, and not to exceed two other exempt positions for each elective administrative officer and each department, board, and commission." It is estimated that the amendment would include approximately 15,298 of the 16,666 positions in the state service. The reason for the exemptions must be clear. For the most part, the exempted consist of persons having policy-determining functions or else in higher educational activities which are operated under separate constitutional jurisdictions.

In the second place, the amendment calls for administration of the civil service system by a "non-salaried civil service commission to consist of four persons not more than two of whom shall be members of the same political party, appointed by the governor for eight-year overlapping terms . . ." The administration of the commission's powers is to be vested in a state personnel director "who shall be a member of the state civil service and who shall be responsible to and selected by the commission after open competitive examination." The amendment seeks to set up a system in which the actual administration is conducted by a competent personnel director, who is to be advised by, and in the last analysis checked by, a non-salaried, bi-partisan commission.

Third, the amendment vests the commission with the following broad powers of personnel control: the classification of all positions in the state civil service according to the usual criteria of duties and responsibilities, preparation and adoption of a comprehensive compensation scheme for all classes in the state service, approval and disapproval of all personal service disbursements, regulation of all conditions of employment in the state service, preparation and administration of competitive examinations, and the drafting of such rules and regulations as may be necessary to carry these personnel powers into practice.

Fourth, provision is made for a partially closed "back door." The amendment specifies that "no removals from or demotions in the state civil service shall be made for partisan, racial, or religious considerations." The reason for the partially closed "back door" arises from the state's recent unsatisfactory experience with a completely open "back door."<sup>5</sup>

<sup>5</sup> See the author's "Case Study of the Open Back Door" in a forthcoming issue of the *National Municipal Review*.

The lesson of this experience indicated that restoration to a reëmployment register is but little protection for employees who are dismissed in large numbers for political reasons.

Fifth, it is provided that the legislature shall have a minimum of control over the personnel system by reason of the fact that the amendment requires the appropriation of "a sum not less than one per cent of the aggregate annual payroll of the state service for the preceding fiscal year as certified to by the commission." Such an appropriation would amount to approximately \$250,000 a year. This, it is submitted, is a sufficiently large sum with which to administer a program for a total of 17,000 employees. The per centum formula was used rather than a fixed sum in order that the amendment might the more readily adjust to changing personnel conditions.

The amendment contains a feature which it is hoped will insure the execution of all the sections of the amendment. This feature provides that "after August 1, 1941, no payment for personal services shall be made or authorized until the provisions of this amendment have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state." By specifically prohibiting the payment of any personal service item and insuring that prohibition by specific provisions for citizen action, it was hoped that it would be possible to compel compliance with all of the sections of the amendment. The appropriation section is one which it might be expected that the legislature would disregard. Yet were it to do so, under the terms of this final section of the amendment no disbursing officer would be allowed to make any salary payments, including those to the governor and to the legislators themselves, until the appropriation for the civil service commission should have been made. The provision was deliberately designed to stall state administrative machinery in the event of the failure of the legislature or any administrative officer fully to satisfy his portion of the requirements of the amendment. In other words, in order to meet a situation which they found to be highly unsatisfactory, the advocates of civil service in Michigan have designed a self-executing amendment.

Throughout the amendment the attempt has been to insure the protection which comes with rigid principles without at the same time forcing that rigidity of detail which too frequently gluts modern state constitutions. Among students of government there must be few who would contend that the half-dozen specific provisions of this amendment will unduly burden Michigan's voluminous constitution.

Effective as of January 1, 1941, the amendment requires the performance of three steps to set it in operation: (1) appointment by the governor of the new commission, which will "supersede all existing state personnel agencies and succeed to their appropriations, records, supplies, equipment,

and other properties"; (2) selection of a state personnel director by the commission by means of an open competitive examination; and (3) an appropriation by the legislature, as specified.

The new Democratic governor has already set the first two processes in motion. The legislative appropriation will be much slower to materialize. In fact, considerable difficulty may well be experienced by the backers of civil service in persuading the legislature to make the appropriation at all. In such an event, it will be necessary to employ the coercive device already discussed. If this is vigorously undertaken, or should it prove unnecessary, Michigan will be well provided with the essentials of a sound and permanent personnel program.

To personnel administrators and merit enthusiasts in other jurisdictions, the most significant part of the Michigan effort will be the effectiveness of the self-executing amendment as a device for imbedding programs whose tenures are all too uncertain. If it is successful in Michigan, the device may find widespread support. If it fails, it will provide a case study in the futility of "whole-hog," coercive programs. In either event, Michigan's experience will be useful to others.

EDWARD H. LITCHFIELD.

*Brown University.*

**Organization of the Executive Branch of the National Government of the United States: Changes between July 16 and November 15, 1940.**<sup>1</sup> As in previous lists, mention is here confined generally to units specifically authorized by law or established by the President by executive order or Reorganization plans under general authority vested in him. Changes in units created by heads of departments or independent establishments are excluded unless of major importance.

*Administrator of Export Control.* Authorized by Executive Order 8567 of October 15, 1940, and Administrative Regulation of the same date to administer the provisions of the act of October 10, 1940 (Public 829, 76th Congress), authorizing the President to requisition for national defense any equipment, supplies, etc., the exportation of which has been denied under the provisions of Sec. 6 of the act approved July 2, 1940 (Public 703, 76th Congress).

*Advisory Committee on Selective Service.* Appointed by the President September 21, 1940, to coordinate plans for selective service. No formal order was issued, the creation of the Committee being indicated by letters to the individual members.

*Advisory Committee to Encourage Travel in the United States.* Author-

<sup>1</sup> Articles of this character appearing in the REVIEW prior to 1940 are listed on page 1044 of the issue for December, 1939. Later articles have appeared in the issues for June and October, 1940.

ized to be appointed by the Secretary of the Interior by Public 755, approved July 19, 1940. It will consist of one representative each from the Departments of State, Agriculture, and Commerce, the Interstate Commerce Commission, the Civil Aeronautics Authority, and the United States Maritime Commission, to be designated by the several departments or agencies, and not exceeding six representatives "of the various sections of the nation, including transportation and accommodation agencies," to be appointed by the Secretary of the Interior and to serve at his pleasure. The members of the Committee receive no compensation, but are reimbursed for expenses in attending meetings.

*Board of Investigation and Research [on Transportation].* Created by Sec. 301 of the Transportation Act of 1940 (Public 785, 76th Congress), approved September 18, 1940, to investigate transportation facilities and services, public aid that has been extended to carriers, and the extent of taxes imposed upon carriers. The Board is composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member will receive a salary of \$10,000 a year. The Board is to submit to the President and to Congress a preliminary report by May 1, 1941; it shall also submit an annual report, a final report, and such other reports as it may deem necessary. The Board will cease to exist on September 18, 1942, unless extended by proclamation of the President for an additional period not exceeding two years.

*Defense Communications Board.* Created by Executive Order 8546 of September 24, 1940, to coordinate and prepare plans for the national defense, such plans to include (1) the needs of the armed forces, of other government agencies, of industry, and of civilian activities, (2) the allocation of radio, wire, and cable facilities, and (3) the measures of control to be developed. The recommendations of the Board are to be submitted to the President for final action. The Board is composed of the chairman of the Federal Communications Commission, the Chief Signal Officer of the Army, the Director of Naval Communications, the Assistant Secretary of State in charge of the Division of International Communications, and the Assistant Secretary of the Treasury in charge of the Coast Guard. In the absence of any member, the agency he represents may be represented by an alternate designated by the head of such agency.

*Defense Homes Corporation.* Organized October 25, 1940, with a capital of \$10,000,000 to assist in providing housing facilities needed for the activities of the War and Navy Departments.

*Defense Plant Corporation.* Organized August 22, 1940, with a capital of \$5,000,000 to purchase, lease, or build plant facilities, including supplies and machinery. It is affiliated with the Reconstruction Finance Corporation.

*Defense Supplies Corporation.* Organized August 29, 1940, with a capital

of \$5,000,000 to acquire and carry critical supplies. It is affiliated with the Reconstruction Finance Corporation.

*Health and Medical Committee.* Created by Council of National Defense on September 19, 1940, to advise the Council regarding the health and medical aspects of national defense and to coördinate activities connected therewith. The chairman of the committee is Dr. Irvin Abell; the other members are the Surgeons General of the Army, the Navy, and the Public Health Service, and the Chairman of the Division of Medical Sciences of the National Research Council. The committee has appointed subcommittees on medical education, hospitals, industrial medicine, industry, nursing, and Negro health. The members of the subcommittees are not members of the main committee. Each subcommittee is a separate subordinate unit.

*Inter-Departmental Committee on Inter-American Affairs.* Created by the Council of National Defense August 16, 1940, to consider and correlate proposals of the government with respect to hemisphere defense and commercial and cultural relations. The Committee consists of the Coördinator of Commercial and Cultural Relations between the American Republics, the president of the Export-Import Bank, one representative each from the Departments of State, Agriculture, Treasury, and Commerce, and such representatives from other agencies as may be needed from time to time.

*Interstate Commerce Commission.* Title II of the Transportation Act of 1940 (Public 785, 76th Congress) approved September 18, 1940, gives the Interstate Commerce Commission the same power over interstate coastwise, inland, and Great Lakes water rates and services as it has over interstate railroad rates. Heretofore the power of the Commission over water transportation has been confined to through rail and water rates. The Transportation Act also transfers to the Interstate Commerce Commission certain powers heretofore exercised by the Maritime Commission.

*Latin American Division, Department of Agriculture.* Established October 30, 1940, by the Secretary of Agriculture as a part of the office of Foreign Agricultural Relations to coördinate all phases of the program for encouraging production of crops that complement those of the United States, particularly rubber.

*Metals Reserve Corporation.* Organized June 28, 1940, with a capital of \$5,000,000 to acquire and carry stocks of strategic minerals, principally tin and manganese. It is affiliated with the Reconstruction Finance Corporation.

*National Park Service.* Functions increased by Public 755, 76th Congress, approved July 19, 1940, to include the encouragement of travel within the United States and its possessions. Annual appropriations of \$100,000 are authorized.



*Office for Coördination of Commercial and Cultural Relations between the American Republics.* Created by the Council of National Defense on August 16, 1940, to coördinate activities relating to hemisphere defense, to review existing laws, to coördinate research, to recommend new legislation essential to the basic objectives of the government's program, and to formulate and execute a program in coöperation with the State Department to further national defense and strengthen the bonds between the nations of the Western Hemisphere. The office is headed by a coördinator, who is also a member and chairman of the Inter-Departmental Committee on Inter-American Affairs.

*Office of Land Utilization, Department of the Interior.* Established October, 2, 1940, by the Secretary of the Interior to administer soil and water conservation activities transferred to the Department of the Interior from the Soil Conservation Service of the Department of Agriculture by Reorganization Plan No. IV. The assistant to the assistant secretary in charge of land utilization has been placed in charge of the new unit. The work of the director of forests of the Department of the Interior has been transferred to the new agency, and it is stated that a division of forests will be established in it.

*Permanent Joint Board of Defense, United States and Canada.* Created by the President of the United States and the Prime Minister of Canada on August 22, 1940, to make "studies relating to sea, land, and air problems, including personnel and matériel," and "to consider in a broad sense the defense of the north half of the Western Hemisphere."

*Priorities Board.* Established by the Council of National Defense; creation approved by the President by Executive Order 8572 of October 21, 1940. The Board is empowered to determine the priority of delivery of all contracts for national defense as provided by Sec. 2(a) of the act of June 28, 1940 (Public 671, 76th Congress). It consists of the following members of the Advisory Commission to the Council of National Defense: the Advisor on Industrial Production (William S. Knudsen), as chairman, the Advisor on Industrial Matériels (Edward R. Stettinius, Jr.), and the Advisor on Price Stabilization (Leon Henderson). The Board has designated Donald M. Nelson as Administrator of Priorities.

*Rubber Reserve Company.* Organized June 28, 1940, with a capital of \$5,000,000 to acquire and carry supplies of crude rubber. It is affiliated with the Reconstruction Finance Corporation.

*St. Lawrence Advisory Committee.* Created October 16, 1940, by Executive Order 8568, to advise the President in regard to the development of navigation and hydroelectric power in the international rapids section of the St. Lawrence River. The Committee consists of Leland Olds, chairman of the Federal Power Commission, as chairman, A. A. Berle, Assistant Secretary of State, Brigadier General Thomas M. Robins of the Board of

Engineers for Rivers and Harbors, and Gerald V. Cruse, representative of the Trustees of the Power Authority of the State of New York. The order directs the Federal Power Commission and the Corps of Engineers, United States Army, to make specific investigations.

*Selective Service System.* Authorized to be established by the President by the "Selective Service Act of 1940" (Public 783, 76th Congress), approved September 16, 1940. A Director of Selective Service is authorized to be appointed, by and with the advice and consent of the Senate, at a salary of \$10,000 a year.

*United States Commission for the Celebration of the Two Hundredth Anniversary of the Birth of Thomas Jefferson.* Created by Public Resolution 100, 76th Congress, approved September 24, 1940, to prepare and coördinate plans for commemoration of the birth of Thomas Jefferson. The body consists of nineteen commissioners as follows: the President of the United States, the presiding officer of the Senate, the Speaker of the House of Representatives, eight persons to be appointed by the President of the United States, four senators appointed by the President pro-tempore of the Senate, and four representatives appointed by the Speaker. The Commission will expire not later than April 13, 1945. An appropriation of \$5,000 is authorized.

L. F. SCHMECKEBIER.

*The Brookings Institution.*

## FOREIGN GOVERNMENT AND POLITICS

**Recent Governmental Reforms in France.** In reporting to the French people on the state of affairs in France on June 25, 1940, Premier Marshal Philippe Pétain said: "It is toward the future that . . . we turn our efforts. A new order commences." A new order in France has begun, indeed, even though the character of the French political, economic, and social institutions of the future is not yet subject to definitive determination. With large portions of her territory occupied by German and Italian troops and with all of France at the mercy of her conquerors, the Vichy government has been unable to act with that independence essential to the exercise of full sovereign power. Because of this subjugation to countries still at war, the future of France is inextricably bound up with the outcome of the present conflict. Nevertheless, the "restoration of all that is sound in French life" is well under way, according to Marshal Pétain. This task has been undertaken by a government composed in a large measure of persons who have never enjoyed a wide popular following. For years, criticisms of French democratic political institutions and the practices which surrounded them were not inconsiderable and, although handicapped by the necessity of looking both to Wiesbaden and to the German authorities in Paris, the critics who repeatedly sought to discredit the parliamentary system are now having their innings. Under the normal operation of the French political system, the Pétain cabinets could not have come into power, because it is extremely doubtful whether they could have received the support of a parliamentary majority. The views of such men as Pierre Laval, Paul Baudoin, Admiral Darlan, Pierre-Étienne Flandin, Adrien Marquet, Jean Ybarnégaray, and Marshal Pétain did not coincide with the political temper of the country. With the military defeat of France, however, came the collapse of the Third Republic, and out of the débâcle has arisen an authoritarian régime which has been able to remain in office because it has not been unacceptable to the conquerors of France.<sup>1</sup> Although the anti-democratic Vichy government must be regarded as provisional in character, its reforms are of con-

<sup>1</sup> On June 14, 1940, German troops occupied Paris, and on June 16 Paul Reynaud resigned as premier and was replaced by Marshal Pétain. On that same day, the cabinet voted, 13 to 11, to request an armistice. The armistice with Germany was signed on June 22 and that with Italy on June 24. The government had been moved from Paris to Tours, to Bordeaux, to Clermont-Ferrand, and finally to Vichy. On July 9, 1940, the French parliament assembled at Vichy, and on July 10 the National Assembly adopted proposals for a revision of the constitution. The events of these trying days are chronicled in such sources as the following: A. Maurois, *Tragedy in France* (New York, 1940); H. F. Armstrong, *Chronology of Failure* (New York, 1940); and K. Loewenstein, "The Demise of the French Constitution of 1875," in this REVIEW, Vol. 34 (1940), pp. 867-895.

siderable interest to those who follow political developments in France. It is extremely doubtful whether conditions favorable to the reestablishment of the Third Republic will again obtain, and the changes introduced by the Pétain régime may well leave their imprint on the France of the future.

It must be remembered that the nature of the armistice with Germany is such that the present government of France has not been able to act independently of external control. The armistice with Italy closely follows the agreement with the Reich. Parts of France are under military occupation and other zones are demilitarized.<sup>2</sup> The French government is obligated to cooperate with the German and Italian military commands, and if at any time the obligations under the agreements are not observed by France, the agreements may be terminated by Germany and Italy.<sup>3</sup> Both agreements provide for commissions to regulate and supervise the execution of their terms, and the Vichy government has had to observe with care the regulations issued by these commissions and their inspectors in France.<sup>4</sup> In virtually all of its acts, the Pétain régime has had to proceed cognizant of its ultimate responsibility to the German and Italian military and civil authorities vested with regulatory powers over France.<sup>5</sup>

When the Senate and the Chamber of Deputies convened at Vichy on July 9, 1940, it was apparent that pro-republican supporters were on the defensive. In the Chamber, the debate on the resolution declaring a revision of the constitution to be necessary began with a plea by President Herriot that recriminations and unfounded assessments of blame be eliminated from their discussions. Xavier Vallat was vociferously supported when he asked that partisan differences be forgotten so that all Frenchmen might unite in a single political faith based upon the ideal of national solidarity.<sup>6</sup> Pierre Laval, however, revealed a willingness to recall

<sup>2</sup> See the German armistice, Arts. 2 and 3; the Italian armistice, Arts. 2, 3, and 4.

<sup>3</sup> German armistice, Art. 24; Italian armistice, Art. 26.

<sup>4</sup> German armistice, Art. 22; Italian armistice, Arts. 23-25. The German armistice commission has its seat at Wiesbaden, and for many purposes this city may be called the true capital of France. The French representative to Wiesbaden has been General Charles Huntziger. There is also a German Administration for France with headquarters at Paris. French cabinet ministers are frequently summoned to Paris by this body. In addition, the German government has designated Otto Abetz as its "ambassador in France," with a roving commission which gives him the power to represent the civil government of the Reich in both the occupied and unoccupied parts of France.

<sup>5</sup> It is possible that the Vichy government possesses some bargaining power at Wiesbaden, to be found in the threat of Pétain to resign and allow the provisional government of France to be reformed elsewhere. For example, if the government were moved to North Africa and if the French military forces in that region were to aid the British in defeating the Italians in Africa, a situation of considerable embarrassment to Rome and Berlin might arise.

<sup>6</sup> Detailed accounts of the first days at Vichy are contained in J. Thouvenin, *Les*

the sins of his opponents during the immediate past in identifying French military defeat with the need to destroy the parliamentary system. French democracy, Laval said, had engaged in "combat against Naziism and Fascism and had lost the struggle; it ought to disappear. A new, audacious, authoritarian, social, national régime ought to be substituted for it. . . ." Laval added: "I have said and I repeat it: a régime which has brought war and defeat is not qualified to make peace."<sup>7</sup> In a lengthy discourse, Flandin supported Laval's views.

Virtually no opposition to Laval's bold request for the establishment of an authoritarian government was expressed. On the contrary, even spokesmen from the Left supported the government motion, although with motives different from Laval's.<sup>8</sup> The Chamber, from which the members of the Communist party had long since been excluded, voted 395 to 3 in favor of the resolution. The vote in the Senate was 229 to 1.<sup>9</sup> The two houses convened as the National Assembly on July 10, and, by a vote of 569 to 80, adopted a law amending the constitution by giving the government the power to promulgate a new fundamental law.<sup>10</sup> The government's project underwent last-minute revision in the Assembly before it

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*Premiers Actes du Maréchal Pétain* (Clermont-Ferrand, 1940), pp. 55 ff., and J. Montigny, *Toute la Vérité sur un Mois Dramatique de notre Histoire* (Clermont-Ferrand, 1940), pp. 52 ff.

<sup>7</sup> See Montigny, *supra*, especially pp. 62, 63. Prior to the sessions at Vichy on July 9 and 10, Laval had been the leader of a group of parliamentarians which had urged that the government remain in France and reorganize itself "to meet the new needs." If the government were transferred to Africa, as some advocated, Laval said it would merely mean the continuation of the "same system with the same personalities." On June 21, Laval headed a committee composed of such men as Marquet, Bonnet, Pietri, and Bergery and called on Albert Lebrun, President of the Republic, in order to persuade him to remain in France. In an interview that was not without heated remarks, Laval and his friends apparently were successful in their efforts. The conversation between Laval and Lebrun is reprinted, in part, in Montigny, *op. cit.*, pp. 25 ff.

<sup>8</sup> See, for example, the remarks of Spinasse, a Socialist, who said that strong government was called for in order "to avoid having the country founder in violence and anarchy. Our duty is to permit the government to make a bloodless revolution. . . . We must also break with the past without hope of return." *Ibid.*, p. 59.

<sup>9</sup> The minority in the Chamber consisted of the following deputies: Blondy (Oise), Margaine (Marne), and Roche (Haute-Vienne). In the second chamber, the lone dissenter was Senator de Chambrun.

<sup>10</sup> A discussion of the legal aspects involved in the enactment of this amendment may be found in Loewenstein, "Demise of the French Constitution of 1875," cited above, pp. 867 ff. Correct procedure appears to have been followed in the adoption of the amendment. The vote in the Assembly indicated that party lines were of little significance. The record reveals that among the 80 in opposition were to be found such well-known persons as Vincent-Auriol, Blum, de Chambrun, Collumb, Dormoy, Jean Hennessy, Paul-Boncour, and Jean-Louis Rolland. Herriot, Queuille, and Steeg were listed as among the absent, while Berenger, Campinchi, Delbos, Mandel, Reynaud, and de Wendel are mentioned as having been excused.

was adopted. The cabinet had submitted a proposal which, if approved, would have given it complete power to draft and promulgate a new constitution. Spokesmen representing various shades of political opinion insisted, however, that before the new document should become effective it be submitted to the voters in a referendum. The government accepted the amendment.<sup>11</sup>

As a result of the adoption of the constitutional law of July 10, there has been a tremendous concentration of power in the hands of the executive. Not only the legislative, but constituent power as well, has been given to the cabinet. The Senate and Chamber of Deputies have remained in existence, but one of Pétain's first acts after he had been given his new powers was to adjourn Parliament indefinitely.<sup>12</sup> The abdication of the legislative branch of government has been complete. Executive government, free from legislative control, apparently may continue indefinitely, for the National Assembly fixed no date for the submission of the new constitution to the people. The proposed fundamental law may appear in the form of a single document or as a series of acts.

At the head of the present French government is the new office of Chief of State, a post created by the first constitutional act issued over Pétain's

<sup>11</sup> The amendment of July 10, 1940, which brought an end to the constitution of the Third Republic, contains but a single article, as follows:

"The National Assembly gives all powers to the government of the Republic, under the authority and the signature of Marshal Pétain, to effect the promulgation by one or more acts of a new constitution of the French state. This constitution shall guarantee the rights of labor, of the family, and of the country.

"It shall be ratified by the nation and applied by the assemblies which it shall have created.

"The present constitutional law, deliberated and adopted by the National Assembly, shall be executed as the law of the state."

This law was signed by Lebrun, the President of the Republic, and countersigned by Pétain as President of the Council.

In addition to publication in the *Journal Officiel*, the first fundamental constitutional acts and laws have been published in Montigny, *supra*; in Thouvenin, *Les Premiers Actes du Maréchal Pétain*; in Thouvenin, *D'Ordre du Maréchal Pétain* (Paris and Clermont-Ferrand, 1940); and in P. Naudin, *Un Mois de Rénovation Nationale: des faits, des actes, des documents* (Vichy, 1940). Unless otherwise indicated, the writer has relied upon the official texts as republished in Naudin.

<sup>12</sup> On July 11, Marshal Pétain issued the following constitutional act:

"Article 1. The Senate and the Chamber of Deputies shall continue to exist until the Assemblies provided for by the constitutional law of July 10, 1940, shall have been formed.

"Article 2. The Senate and the Chamber of Deputies shall be adjourned until further notice.

"Hereafter, they shall be convened only by the Chief of State.

"Article 3. Article one of the constitutional law of July 16, 1875, is abrogated."

The reference in Article 3 is to the date when the Senate and the Chamber were required to meet and to the minimum length of their sessions.

signature. Dated July 11, 1940, the text of the act follows: "We, Philippe Pétain, Marshal of France, having seen the constitutional law of July 10, 1940, proclaim the assumption of the functions of Chief of the French State. Consequently, we decree: Article 2 of the constitutional law of February 25, 1875, is abrogated."<sup>13</sup> As a consequence of this act, the office of President of the Republic has disappeared. Pétain has combined in himself the functions of the presidencies of the council and of the Republic. His successor was provided for in a constitutional act of July 12. It was here stated that Pierre Laval should become Chief of State in place of the aged Marshal in case of necessity and, further, that should Laval be unable to act, someone to be designated by the council of ministers should serve in his stead. However, in an official statement issued on December 14, 1940, Pétain said: "I have just taken a decision which I consider to be in conformity with the interests of the country. M. Pierre Laval no longer forms part of the government . . . Constitutional Act Number 4 which designated my successor is annulled. . . ."<sup>14</sup> A new act of succession was then published in the *Journal Officiel* on the same day. The present law provides that if for any reason Pétain should be unable to exercise his functions as Chief of State, before the ratification of the new constitution, his successor will be designated by the council of ministers.

From the standpoint of understanding where the legal power to govern has been placed, the most important constitutional act is the one (No. 2, July 11, 1940) which defines the powers of the Chief of State. This act is of such significance that its text is given in full.

Article 1. 1) The Chief of the French State has complete governmental power; he names ministers and secretaries of state, who are responsible only to him.

2) He exercises legislative power, in consultation with his ministers: 1—until the formation of the new assemblies; 2—also after this formation, in case of external tension or of a grave internal crisis, he exercises legislative power on his sole decision and in the same form. In the same circumstances, he can decree all budgetary and fiscal orders.

3) He promulgates the laws and assures their execution.

4) He appoints to all civil and military positions for which by law no other mode of designation has been made.

5) He disposes of the armed forces.

6) He possesses the power to pardon and to grant amnesty.

7) Envoys and ambassadors of foreign countries are accredited to him. He negotiates and ratifies treaties.

8) He can declare a state of siege in one or more portions of the territory.

<sup>13</sup> Article 2 of the law of February 25, 1875, provides: "The President of the Republic shall be chosen by an absolute majority of votes of the Senate and Chamber of Deputies sitting together in a National Assembly. He shall be elected for seven years and shall be eligible for reelection."

<sup>14</sup> See the *New York Times*, Dec. 15, 1940.

9) He can declare war without the previous assent of the legislative assemblies.

Article 2. All provisions of the constitutional laws of February 24, 1875, February 25, 1875, and July 16, 1875, incompatible with the present act are abrogated.

It is quite apparent that tremendous power has been given to Pétain and those acting in his name. When it is recalled that the Chamber and the Senate are probably permanently adjourned and that the executive has been granted constituent powers as well, this concentration of authority is all the more remarkable. Yet, in issuing constitutional act No. 2, it is doubtful if Pétain and his ministers went beyond the intentions of the majority in the National Assembly. When the members of Parliament met at Vichy on July 9 and 10, the vast majority were sympathetic toward the establishment of strong government.<sup>15</sup>

Constitutional act No. 2 was amplified by a law of July 12, 1940, which reorganized the council of ministers. This law provides that the council shall be presided over by the Chief of State and that the following posts shall be included in it: minister secretary of state, vice-president of the council; *garde des sceaux*, minister secretary of state for justice; and ministers secretaries of state for the interior, foreign affairs, finance, national defense, public instruction and the arts, youth and family, agriculture and supply (*ravitaillement*), industrial production and labor, communications, and colonies.<sup>16</sup> In addition to the ministers secretaries of state, provision was made for secretaries of state for war, navy, and aviation.<sup>17</sup> It was also provided that what might be referred to as a council within the council be established in order "to coördinate and direct the action of the government in the economic domain." For this purpose, it was specified that the ministers of finance, agriculture and supply, industrial production and labor, communications, and colonies should meet periodically under the chairmanship of the vice-president of the council.<sup>18</sup> Each member of the council of ministers may have a personal cabinet, or bureau.<sup>19</sup> A law of July 15 provided for the creation of posts for 21 secre-

<sup>15</sup> See the texts of remarks by members of Parliament as reported in Montigny, *supra*, pp. 53-95; and in Thouvenin, *supra*, pp. 55-72.

<sup>16</sup> Law of July 12, Art. 1. In subsequent reorganizations of the cabinet, deviations from the posts here enumerated have occurred.

<sup>17</sup> *Ibid.*, Art. 2. Article 3 of this law indicated certain specific functions to be attached to several of the government posts. This article has been amended frequently, however, as functions have been transferred from one post to another whenever changes in personnel have occurred.

<sup>18</sup> Art. 4.

<sup>19</sup> Another law of July 12 provided that these cabinets should consist of no more than seven members, each of whom must have been born of French parents. It was also required that the *chefs de cabinet* and all of the other members of the cabinet, except for one person, be members of the public service or have been members for five years.



taries-general to serve as administrative assistants under the members of the cabinet.<sup>20</sup> The secretaries-general are appointed and dismissed by the council of ministers, but, while in service, each is responsible to the minister under whom he serves.

In addition to the structural alterations in the national administration contained in the laws referred to above, other changes have been made which affect the character of the administrative service on the national, departmental, and communal levels as well as in independent public establishments. Under a law of July 17, it is required that, with certain exceptions, all employees in the public service be persons of French nationality.<sup>21</sup> Exempted from this requirement are foreigners who are in the French army, those who served in a combat unit of the French army during the course of the wars of 1914 and 1939, and their direct descendants. Civil and military servants unable to fulfill the above requirements are subject to immediate dismissal.<sup>22</sup>

The character of local and municipal government in France has been altered by further reforms of the Pétain régime. A law published in the *Journal Officiel* on December 12, 1940, provided for the abolition of elected councils in communes and municipalities of 2,000 population and over.<sup>23</sup> According to Marcel Peyrouton, minister of the interior, this revolutionary step was necessary because "municipal councils in most French towns had a tendency to forget that their primary aim was to look after the town's interests; they mixed too much in politics."<sup>24</sup> It is now provided that the members of councils in towns with a population of from 2,000 to 10,000 shall be appointed by the prefects, while in cities of over 10,000 the councillors shall be named by the minister of the interior. Communities of under 2,000 inhabitants may continue to elect their councils as long as these bodies refrain from participation in "politics." Since July, 1940, many municipal councils had already been suspended under the then existing legislation; the legislation of December 12 has made that procedure uniform. In addition to the dismissal and appointment of hundreds of mayors, there has also been a large turnover in the office of prefect in recent months.

In carrying out the reforms introduced thus far in France, party lines have been of little significance in determining support for or opposition to these measures. It is true, of course, that Communist opposition has been

<sup>20</sup> Arts. 1-3.

<sup>21</sup> Law of July 17, 1940, Art. 1.

<sup>22</sup> Art. 2. A system of pensions for those dismissed from the government service is provided for under the law.

<sup>23</sup> See the *New York Times* and the *Chicago Daily News*, Dec. 12 and 13, and the *New York Times*, Dec. 29, 1940.

<sup>24</sup> It is also true that in many communities in France the local governing bodies have revealed a hostility to the Pétain government. The approaching local elections, now unnecessary, undoubtedly would have shown this opposition.

strong and that the Pétain government has been interning members of that party for several months. It is also a matter of record that several prominent members of the Socialist party have attacked the provisional government. On the other hand, Socialists have been included in the cabinet. It is also a fact that awaiting trial at Riom are former cabinet ministers from the Right as well as from the Center and the Left, and that some of their partisan colleagues have joined the government which is bringing charges against them. The various Pétain cabinets have included a collection of generals, admirals, former civil servants, and members of Parliament ranging from the Socialists on the Left to associates of the Fascist movement on the Right. If the party alignment resulting from the last parliamentary election still were effective, the personnel in the various Pétain cabinets might have been quite different. Men have ruled France since June 16, 1940, who could hardly have held office under a system where their tenure of office was dependent upon the support of a legislative majority.<sup>25</sup>

Seemingly aware of its slender following and conscious of the difficult position in which it finds itself, the Pétain government has sought to

<sup>25</sup> Perhaps the most concise way of indicating who has ruled France since June, 1940, is to list the members of the various cabinets and the posts they have held:

<i>Post</i>	<i>Cabinet of June 16</i>	<i>Cabinet of June 27</i>
President of the Council	Pétain	Pétain
Vice-President of the Council		
<i>oil</i>	Chautemps	Chautemps, Laval
Defense	Weygand	Weygand
War	General Colson	General Colson
Air	General Pujo	General Pujo
Navy and Marine	Admiral Darlan	Admiral Darlan
Justice	Frémicourt	Frémicourt
Interior	Pomaret	Marquet
Foreign Affairs	Baudoin	Baudoin
Finance and Commerce	Bouthillier	Bouthillier
Colonies	Rivière	Rivière
Education	Rivaud	Rivaud
Public Works and Communications	Frossard	Frossard (Public Works only)
Agriculture and Supply	Chichery	Chichery
Labor	Février	Pomaret
War Veterans and Family Communications	Ybarnégaray	Ybarnégaray Février (Communications only)
Under-Secretaries:		
Presidency of Council	Alibert	Alibert
Refugees	Schumann	Schumann
Information		Prouvost
Reconstruction		General Doumenc

strengthen its status by discrediting its predecessors wherever possible. Such prominent political leaders and former ministers as Léon Blum, Paul Reynaud, Edouard Daladier, Guy la Chambre, and Georges Mandel were arrested and have for several months been awaiting trial. The exact charges upon which they are to be tried have not been made public in every case, but in some quarters it is assumed that somehow these men were responsible for the entrance of France into the war and for the military defeat which followed. Prominent persons such as members of the

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<i>Post</i>	<i>Cabinet of July 12</i>	<i>Cabinet of Sept. 7</i>
Chief of State	Pétain	Pétain
Vice-President of the Council	Laval	Laval
Defense	Weygand	
Public Instruction and the Arts	Mireaux	
Public Instruction and Youth		Ripert
Industrial Production and Labor	Belin	Belin
Communications	Pietri	Berthelot
Justice	Alibert	Alibert
Interior	Marquet	Peyrouton
Foreign Affairs	Baudoin	Baudoin and Laval
Finance	Bouthillier	Bouthillier
Colonies	Lemery	Admiral Platon
Youth and Family	Ybarnégaray	
Agriculture and Supply	Caziot	Caziot
Under-Secretaries:		
War	General Colson	General Huntziger
Navy	Admiral Darlan	Admiral Darlan
Aviation	General Pujo	General Bergeret
Minister Secretary to Chief of State		Baudoin

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On December 14, 1940, a reorganization of the cabinet occurred when Laval was dismissed. Flandin replaced Laval in the foreign affairs post, while the office of vice-president of the council was left vacant. At the same time, Chevalier replaced Ripert as minister secretary for public instruction and youth.

On January 3, 1941, the resignation of Paul Baudoin was announced, together with a further reorganization of the cabinet. It was stated that the work of the cabinet would be coordinated under the direction of three of the ministers, Darlan, Huntziger, and Flandin. Under this plan, Darlan would supervise internal affairs, Huntziger would take charge of defense, and Flandin would assume control over foreign and economic affairs. See the *Chicago Daily News*, Jan. 3, 1941, and the *New York Times*, Jan. 4, 1941.

No attempt can be made in this paper to explain the factors responsible for the frequent reorganizations of the French cabinet or for the sudden shifts in personnel. Explanations available in this country are based almost entirely upon rumor.

Rothschild family, David Weil, André Géraud, and Genevieve Tabouis have been portrayed as disloyal to France because of their flight from the country. Marshal Pétain has said that "it is not by leaving France that one can best serve her." Pétain's government promulgated a law on July 23 under the terms of which it is possible to revoke the citizenship of persons who fled from France between May 10 and June 30, 1940, without proper permission or without a proper excuse. It is also permissible to confiscate the property of such persons.<sup>26</sup> The whole question of the acquisition of French citizenship by naturalization has been opened up by the Vichy régime. Under the law of July 22, 1940, and the decree of July 31, a commission has been set up to inquire into cases where citizenship has been acquired under the provisions of the law of August 10, 1927. It has frequently been charged that foreigners who entered France, particularly emigrés, have been able to become citizens too easily and then have used the protection afforded by the state to contribute to the internal weakness of the country.

At present, all persons threatening "the security of the state" may be brought to trial before a special court created for this purpose. Constitutional act No. 5, of July 30, 1940, provided for the establishment of a Supreme Court of Justice, and a law of the same date defined its competence and provided for its organization. The Supreme Court is to judge: "(1) the ministers, former ministers, or their immediate civil or military subordinates, accused of having committed crimes or misdemeanors in the execution of their functions, or of having betrayed the duties in their charge; (2) all persons accused of making attempts against the security of the state and of crimes and misdemeanors in connection therewith; (3) all co-authors or accomplices of persons covered by the preceding paragraphs." Procedure before the court is governed by the regular criminal code. No appeal may be taken from decisions of the court.<sup>27</sup>

In the realm of social and economic matters, the program thus far revealed by the Vichy government has been two-fold: (1) to deal with certain pressing problems made acute by military defeat, and (2) to bring about fundamental reforms which it is hoped will be permanent. Those who have followed French politics in recent years will find much that is familiar in the reform program. In the years 1933-35, the fascist *ligues* advocated many of the measures now supported by the Pétain régime. The leaders of what were two of the strongest fascist groups, Colonel de La Rocque and Jacques Doriot, have rallied to the support of the government's reform program.<sup>28</sup> The spokesmen for the government have made

<sup>26</sup> Law of July 23, Arts. 1 and 2. See Thouvenin, *D'Ordre du Maréchal Pétain*, pp. 59 ff. Many persons have lost their citizenship under this law and have had their property confiscated. <sup>27</sup> Law of July 30, Arts. 12-14.

<sup>28</sup> For accounts of the social and economic institutions proposed by the various

plain their belief that many aspects of totalitarianism are desirable for France. In one of his numerous messages to the French people, Marshal Pétain said: "Our program is to give France the strengths she has lost. She will find them only by following the simple rules which, at all times, have assured the life, health, and prosperity of nations. We shall create an organized France, where the discipline of the subordinates answers to the authority of the leaders, with justice for all. In all spheres, we shall strive to create an élite and to confer leadership upon them with consideration only for their capabilities and merits."<sup>29</sup> Pétain went on to say that "French labor is the supreme resource of the country," but it has been "degraded" by "international capitalism and international socialism." The French family is said to be the agency which will make possible the survival of "the ancient virtues," and the hope of the future is to be found in a properly "disciplined" youth of today.

Members of Parliament stated it as their conviction that French social and economic life ought to be re-evaluated and reorganized. In the National Assembly, the *exposé des motifs* accompanying the proposed constitutional revision of July 10 began by saying: "It is necessary that we learn the lesson of lost battles. A review of the errors committed, determination of responsibility, a search for the causes of our weaknesses, this necessary work will be accomplished. . . . At the cruelest moment of its history, France must understand and accept the necessity of a national revolution."<sup>30</sup>

French management and labor were made acquainted with certain aspects of the coming "national revolution" in the economic sphere when a comprehensive law concerning the organization of industrial production was published in the *Journal Officiel* on August 18, 1940.<sup>31</sup> Under the terms of this law it is possible to dissolve employer and employee syndicates and associations and to bring about the organization of labor and management into units more directly controlled by and subordinate to the state. The law provides that "groups or organizations whose activity is revealed as harmful to the functioning of a branch of activity or incompatible with

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fascist *ligues*, the following sources are useful: R. Millet and S. Arbellot, *Ligues et Groupements de l'extrême Droite à l'extrême Gauche* (Paris, 1935); Colonel de La Rocque, *Service Public* (Paris, 1934); H. Malhere, *La Rocque* (Paris, 1934); P. Guittard and others, *Doriot; L'Homme de Demain* (Paris, 1936); and L. Bertrand, *Hitler* (Paris, 1935).

<sup>29</sup> Message of July 11, 1940. The official texts of Pétain's messages appear in a volume, *Appels aux Français* (Éditions Fernand Sorlot), published by the Comité France-Amérique (Clermont-Ferrand, 1940).

<sup>30</sup> *Exposé des motifs de projet de loi constitutionnel*, the text of which appears in Montigny, *supra*, pp. 129 ff.

<sup>31</sup> The official text of this law is reprinted in Thouvenin, *D'Ordre du Maréchal Pétain*, pp. 33 ff.

the organization instituted by the provisions" of the present statute may be dissolved by decree.<sup>32</sup> In each branch of commercial or industrial activity, a provisional organization committee is to be established.<sup>33</sup> Employers and employees are to be represented on these committees. In cases where a committee fails to function, it may be supplanted by a government commissioner. These industrial committees are empowered to take a census of the units of production and their capacity and stocks; to determine programs of production and manufacture; to plan the acquisition and distribution of raw materials necessary in their particular branch of industry; to fix the general rules in their industry applicable to methods of production and competition; to propose price scales to the public authorities; and to make rules and suggestions safeguarding the common interests of employers and employees.<sup>34</sup> Subject to the approval of the ministers of industrial production and labor and of finance, the committees may impose a tax on their enterprises in order to cover the expense of their activities. No decision of a committee is valid until approved by the minister of industrial production and labor. This same minister is also empowered to requisition materials, products, and personal services needed in a particular branch of industry.<sup>35</sup>

The law on industrial organization also provides for sanctions to be applied in cases where there is failure to comply with the rules issued to expedite the functions of the committees.<sup>36</sup> It is stated in the statute that the head of an enterprise, or one or more of the directors, may, temporarily or permanently, be forbidden to exercise managerial functions. Fines up to ten per cent of the volume of business (*chiffre d'affaires*) may also be assessed.

By authority of the law of August 18, decrees were published on November 12, 1940, which dissolved leading employer and employee organizations. The General Confederation of French Employers was dissolved, as were trade associations such as the *Comité des Forges*. At the same time, the General Confederation of Labor (*C.G.T.*) was also dissolved. These first steps were taken against federations of local or industrial associations of employers and employees. Employer and employee organizations in purely local industries have been allowed to continue their existence. The large organizations, it was said, engaged in politics and set themselves up in competition with the government, a situation which could no longer be tolerated.

Just as the beginnings of a corporate system have made their appearance in French industry, so have French peasants been introduced to a

<sup>32</sup> Art. 1.

<sup>33</sup> Art. 2. Details regarding the personnel of these committees are to be determined by the minister secretary of state for industrial production and labor. Art. 3.

<sup>34</sup> Art. 2.

<sup>35</sup> Art. 6.

<sup>36</sup> Art. 7.

new type of organization for productive purposes. In laws of July 28 and August 5, 1940, the government provided huge sums to aid in the development of marginal land and to subsidize production.<sup>37</sup> The government has given the prefects the power to set the maximum prices of agricultural products in each department, subject to the approval of the National Committee for the Supervision of Prices.<sup>38</sup> Further legislation of August 30, provided for an inventory and stock-taking, under government direction, of tillable soil and agricultural products.<sup>39</sup> The greatest change, however, occurred in the extension of government control over peasant life by the creation of peasant syndicates. This reform was provided for in a law published on December 7, 1940.<sup>40</sup> Under this statute, farmers are to be organized by families in local syndicates and each of the local units is to be affiliated with a regional and national syndicate. These syndicates are all under the supervision of the minister of agriculture.

Notwithstanding all that the present government has said of the importance to French civilization of the family, youth, and the educational system, few actual reforms affecting them have thus far been introduced. Ministries to deal with family matters and with the organization of youth have been established, but they have been slow in getting their programs under way. A youth organization has been created which has for its announced objective the inculcation of a healthier and more Spartan way of life in the ranks of young boys and girls. In particular, youth is to be taught the dangers of alcohol, the evils of urban life, and the value of labor.<sup>41</sup> To aid in this program, efforts have been made to encourage youth to spend more time in rural areas, engaged in healthy outdoor pursuits in the youth camps that have been provided.

As for French education, Marshal Pétain has said that it must be made more "realistic." There must be, he has pointed out, a greater community of interest between scholars and industry and labor. An end must be brought to a system that was based upon a "fatal prestige of a pseudo-culture, purely academic, counsellor of laziness and generator of uselessness."<sup>42</sup> Legislation of August 4 and September 20, 1940, introduced the first of what, it is said, will be extensive reforms. The first of these laws amended the method of recruitment of teachers and inspectors in the primary schools, while the second suppressed certain normal schools.<sup>43</sup> The government has also announced plans for a program designed to increase the value and prestige of French provincial universities.

The attitude of the Vichy government toward certain traditional insti-

<sup>37</sup> The official texts of these laws appear in Naudin, *supra*, pp. 42, 44.

<sup>38</sup> Law of July 30, 1940. <sup>39</sup> Thouvenin, *supra*, p. 29.

<sup>40</sup> *New York Times*, Dec. 8, 1940.

<sup>41</sup> See Thouvenin, *D'Ordre du Maréchal Pétain*, pp. 14 ff.

<sup>42</sup> *Ibid.*, p. 8. <sup>43</sup> *Ibid.*, p. 13.

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tutions that have been the cause of past controversies in French politics is not without interest. The French masonic order and other secret societies have been suppressed and their property has been seized. Government employees have been asked to take an oath not to become members of such organizations. Although government censorship of the press and the radio is very strict, a law which made criticisms in the press of Jews, Catholics, and members of other religious groups punishable by imprisonment has been repealed. In recent months, many of the Jews in the government service have been dismissed. The Catholic church, on the other hand, has been granted additional freedom, especially in the field of education.

H. J. HENEMAN.

*University of Michigan.*

**Canadian Federalism: Report of the Royal Commission on Dominion-Provincial Relations.** The epochal Report of the Canadian Royal Commission on Dominion-Provincial Relations represents the first comprehensive investigation of the governmental system of Canada since Confederation in 1867. Not only does the survey reflect the unique features and problems of the Canadian federation, but it also constitutes an outstanding addition to the general literature on federalism.

The Commission was appointed in August, 1937, to make a "re-examination of the economic and financial basis of Confederation and of the distribution of legislative powers in the light of the economic and social developments of the last seventy years."<sup>1</sup> In making its inquiry, the Commission<sup>2</sup> established a research staff, directed by Alex Skelton, of the Research Department of the Bank of Canada, to make detailed studies of various aspects of the federal problem. The Commission was able to draw to its service outstanding Canadian scholars and experts in the fields of economics, political science, public finance, constitutional law, and history.<sup>3</sup> The Commission, however, did not rely solely on its research staff.

<sup>1</sup> For a résumé of the nature of Canadian Confederation and developments since that time, see Report of the Commission, Book I, *Canada: 1867-1939*.

<sup>2</sup> The original appointees to the Commission were the Honorable Newton W. Rowell, Chief Justice of Ontario, the Honorable T. Rinfret, Justice of the Supreme Court of Canada, John W. Dafoe, editor of the *Winnipeg Free Press*, R. A. McKay, of Dalhousie University, and H. F. Angus, of the University of British Columbia. In November, 1937, Mr. Justice Rinfret resigned, owing to illness. Joseph Sirois, of Laval University, Quebec, was appointed to fill the vacancy, and in November, 1938, he was made chairman in the place of Mr. Rowell, who resigned because of ill health.

<sup>3</sup> A Canadian comment was that "for the first time since Confederation our statesmen have allowed a body of experts to function without imposing on their efforts the dead hand of the legal profession." *Canadian Forum*, June, 1940, p. 70.



Over a period of approximately one year, it held public hearings at Ottawa and at each of the provincial capitals to listen to the arguments of the provincial governments and the views of non-official bodies.<sup>4</sup> Not all the provinces participated in the public hearings. Premier Aberhart, of Alberta, under instruction of the provincial legislature, ignored the inquiry. (The Edmonton Chamber of Commerce, however, presented a brief.) Quebec also refused to take part, objecting to the assumption that the Federal Government had the right to appoint of its own accord "a Commission whose report might form the basis of possible amendments to the Constitution." Final hearings were held at Ottawa after the participating provinces had had "time to consider each other's evidence and the research material prepared for the Commission." The Commission's findings, recommendations, and supporting monographs were released on May 16, 1940.<sup>5</sup>

On the basis of its comprehensive examination, the Commission outlined a plan for sweeping changes in the federal structure. The principal broad issues dealt with by the Commission were two: the allocation of jurisdiction or powers between the Dominion and the provinces, and the distribution of financial resources between the Dominion and the provinces. Around these questions, of course, recur the maladjustments of federal systems. In Canada, as elsewhere, economic, social, technological, and political shifts have made the prevailing jurisdictional and financial arrangements inappropriate.<sup>6</sup>

<sup>4</sup> Most of the briefs presented by the provincial governments were of high quality; they are valuable sources of information on the government and the economy of the provinces.

<sup>5</sup> *Report of the Royal Commission on Dominion-Provincial Relations* (Ottawa: King's Printer, 3 v., \$1). The three-volume report and all the research monographs, with the exception of certain detailed financial statistics, may be obtained from the same source for \$10. The printed and mimeographed monographs are as follows: D. G. Creighton, *British North America at Confederation*; W. A. Mackintosh, *The Economic Background of Dominion-Provincial Relations*; D. C. MacGregor and others, *National Income*; Esdras Minville, *Labour Legislation and Social Services in the Province of Quebec*; A. E. Grauer, *Public Assistance and Social Insurance*; J. A. Corry, *Difficulties of Divided Jurisdiction*; L. M. Gouin and Brooke Claxton, *Legislative Expedients and Devices Adopted by the Dominion and the Provinces*; J. A. Corry, *Growth of Government Activities since Confederation*; A. E. Grauer, *Labour Legislation*; *Public Health*; *Housing*; Stewart Bates, *Financial History of Canadian Governments*; H. C. Goldenberg, *Municipal Finance in Canada*; F. A. Knox, *Dominion Monetary Policy (1929-1934)*; W. J. Waines, *Prairie Population Possibilities*; S. A. Saunders, *Economic History of the Maritime Provinces*; W. Eggleston and C. T. Kraft, *Dominion-Provincial Subsidies and Grants*. The monographs are obtainable at 50¢ each. Other special studies, many dealing with constitutional and legal matters, were prepared for the Commission, and, not being published, were filed with the Commission's records.

<sup>6</sup> For some time the Dominion government has been blocked in exercising author-

In discussing jurisdictional changes, the Commission dealt first with the social services. It was of the opinion that provincial responsibility for social welfare should be basic and general, Dominion responsibility an exception and strictly defined. It recommended the transfer to the Dominion of responsibility for unemployment relief<sup>7</sup>—that is, aid to “unemployed employables.” The Commission thought that the large fluctuating expenditures for relief should be borne by the Dominion, which is able to obtain the needed revenues in a manner “the least harmful to welfare and productive enterprise.” It believed, too, that provincial jurisdiction over unemployment and the consequent conflicting policies, as between provinces, made it impossible to “eliminate the avoidable economic wastes and social consequences of mass unemployment.” The Commission furthermore recommended that jurisdiction over unemployment insurance<sup>8</sup> and employment services be granted to the Dominion; and, without urging immediate action, it suggested that the Dominion be given power to establish a system of compulsory contributory old-age annuities. The Commission thought, however, that the existing system of non-contributory old-age pensions might remain within provincial jurisdiction. It recommended that health insurance, if and when established, should, in view of the variations in economic conditions and social outlook from province to province, be within provincial jurisdiction,<sup>9</sup> as should the existing system of workmen’s compensation.

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ity in fields of social and economic legislation because the residual power allocated to it by the British North America Act of 1867 has been narrowly limited by judicial decision. At the same time, the powers of the provinces have been unduly inflated. Furthermore, under the financial arrangements of Confederation the provinces were restricted to specific taxes, whereas the Dominion was given extremely broad taxing authority. Under such a system, it was unavoidable that spheres of authority and of fiscal resources should be thrown hopelessly out of gear. See Luella Gettys, *The Administration of Canadian Conditional Grants* (Chicago: Public Administration Service, 1938), pp. 4 ff.

<sup>7</sup> Since 1930, the provinces, constitutionally responsible for relief activities, have received liberal grants-in-aid from the Dominion to finance unemployment relief. For a discussion of the administration of unemployment relief, see Gettys, *op. cit.*, pp. 142 ff.

<sup>8</sup> On July 10, 1940, the British North America Act was amended in the British Parliament to vest the Dominion with exclusive jurisdiction over “unemployment insurance.” Prior to the presentation of this amendment to the British Parliament, the provinces had consented to such revision of the Act (*Labour Gazette of Canada*, July, 1940, p. 682). In consequence of this amendment, the Dominion Parliament enacted an unemployment insurance act on August 7, 1940, providing for a national system of compulsory unemployment insurance and of public employment offices. Similar legislation had been passed in 1935 (*Statutes of Canada*, 1935, ch. 38), but it had been declared *ultra vires* by the Judicial Committee of the Privy Council on January 28, 1937.

<sup>9</sup> The recommendations of the Commission have been sharply criticized in that

In the field of labor legislation the Commission recommended that the Dominion be given power "to establish basic minimum wages and maximum hours of labour, and to fix the age of employment," and that the provinces be given authority to raise the federal standards if desired locally. The Commission pointed out the close relationship between unemployment relief policy and hour and wage policy, with the consequent necessity for interrelated action at the national level. It recommended that control of marketing of commodities "entering largely into interprovincial and foreign trade should be governed by Dominion legislation," and that the Dominion should be given power to regulate all insurance companies save those provincially incorporated companies doing business only in the province of incorporation.

To facilitate continual Dominion-provincial coöperation and jurisdictional adjustments, two novel recommendations were made. One was that a permanent secretariat be established to foster frequent and regular conferences of Dominion and provincial officials. Thus would be put on a stable and continuing basis a practice that has been followed from time to time.<sup>10</sup> Furthermore, to introduce flexibility in federal relations, the Commission proposed that a general delegation of legislative power be permitted between the Dominion and the provinces on a temporary as well as permanent basis. Under this arrangement, specific questions could be dealt with as they arose. If an individual province wanted to delegate authority to the Dominion, it would not be handicapped by a general mandate requiring consent of all provinces.

The Commission's fiscal proposals included the transfer of certain taxes to the Dominion, Dominion assumption of provincial debt, and the establishment of a system of "national adjustment grants." This fiscal plan was "an attempt to make the division of financial powers and responsibilities of governments conform to the basic economic structure of the country," and "to ensure to every province a real and not an illusory autonomy by guaranteeing to it, free from conditions of control, the revenues necessary to perform those functions which relate closely to its social and cultural development." In general, the Commission recommended transfer to the Dominion of the taxes with highly fluctuating yields and retention by the provinces of those with more nearly constant yields. The Commission proposed that sole authority to levy personal-income and inheritance taxes be vested in the Dominion. In the field of corporation taxation, the Commission found that the prevailing divided jurisdiction had led to a

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they do not include proposals for a broad, all-embracing social insurance and security scheme. Dominion responsibility for the employable unemployed is "all to the good, but in regard to the unemployables the Commission has ideas which are pure Tudor." Dorothy G. Steeves, "A British Columbia View," *Canadian Forum*, Nov., 1940, p. 239.

<sup>10</sup> See Gettys, *op. cit.*, pp. 19-20.

complexity "beyond belief" and that, apart from the costs and annoyances of compliance, the system of corporation taxation operated so as to reduce production. It recommended almost complete transfer of the sphere of corporate taxation to the Dominion. These tax recommendations were necessary to provide the Dominion with revenues adequate to meet the new obligations to be transferred to it, but they were also essential "both for reasons of equity as between provinces, and for assuring that these tax fields will be exploited with least harm to the national income."

The assumption by the Dominion of all provincial debt was recommended.<sup>11</sup> Dominion and provincial debt had, as the Commission said, already become "to some extent interlocked." Economies, in administration and through conversion, could be achieved by the Dominion. Parts of the provincial debt, such as that incurred for relief, were the result of forces over which the provinces had no control. Moreover, the Commission contemplated future Dominion control over provincial indebtedness. It suggested that in future the service on provincial debt incurred with the approval of a proposed Finance Commission would be considered in the computation of "national adjustment grants"; without that approval, the debt would be "on the sole credit of the province."

Of special interest was the proposal of annual "national adjustment grants" to be made by the Dominion to the provinces. These grants represent "the Commission's conception of a federal system which will both preserve a healthy local autonomy and build a stronger and more united nation." They would replace the extraordinarily complex existing system of unconditional subsidies and allowances<sup>12</sup> and conditional grants. The Commission rejected the conditional grant as a means for making Dominion-provincial financial adjustments. From Canadian experience, it concluded that this type of aid failed to meet "the test of efficiency" as a "method of financing major functions of government and of providing for necessary inter-governmental transfers in a federal state," and that it "dissipates seriously responsibility for public expenditures." In Canada, the conditional grant had, on the whole, been ineffectively administered.<sup>13</sup> The Commission, however, thought that it might be retained for non-contributory old-age pensions; nor did it consider future introduction of the conditional grant for "certain limited and clearly specified purposes in other fields objectionable."

<sup>11</sup> Self-supporting provincial debt—utility investments, etc.—would continue to be serviced by the provinces through payments to the Dominion. Furthermore, in Quebec, where provincial debt is an unusually low proportion of combined provincial and municipal debt, the Dominion would assume 40 per cent of the net, or dead-weight, cost of combined provincial and municipal debt service.

<sup>12</sup> For a comprehensive analysis of Canadian subsidies, see J. A. Maxwell, *Federal Subsidies to the Provincial Governments in Canada* (Cambridge, 1937).

<sup>13</sup> See Gettys, *op. cit.*

The unconditional national adjustment grants would "enable a province to provide adequate services (at the average Canadian standard) without excessive taxation (on the average Canadian basis)."<sup>14</sup> The Commission suggested the creation of a Finance Commission to review the grants at five-year intervals and to advise the government on provincial requests for emergency grants. The adjustment grants would be given when provinces could not supply average services without above-average taxation, but the province would be "free to determine on what services the grants will be spent, or whether they will be used, not to improve services, but to reduce provincial (and municipal) taxation." It follows, of course, that national administrative supervision would not be attached to the adjustment grant.

For the computation of the initial grants, the Commission devised a technique, of the crudeness of which the Commission was "keenly aware." To obtain a measure of the level of services from province to province, it used per capita figures on "joint provincial-municipal expenditures on public welfare and education," after "adjustment in some cases for costs of living and other local circumstances." To this were added figures based on highway, agriculture, and public-domain expenditures annually from 1928 to 1931.<sup>15</sup> To ascertain the weight of taxation in each province, "the proportion of total provincial and municipal taxation to the total income of each province" was compared with the national average. The Commission believed that the resulting estimates of adjustment grants would serve until the proposed Finance Commission could develop more refined techniques. The Finance Commission would also act "as a clearing house for economic, financial, and administrative information relevant to Dominion-provincial relations and public finance policy."

The Commission dealt with other questions more or less peculiar to Canada,<sup>16</sup> but the foregoing aspects of the inquiry are the phases of pri-

<sup>14</sup> It may well be doubted whether welfare services can be promoted and made uniform through this type of grant. Although the evils of the subsidy system, "with all its shabby backdoor begging and borrowing, will be avoided, one suspects that the national adjustment grant in the hands of a slick politician, may turn out to be the same old devil after all, its cloven hoof and tail neatly wrapped up in a more civilized garment." Steeves, *op. cit.*, p. 239.

<sup>15</sup> In the measurement of the level of provincial services, the performance of social services by the church rather than the state in Quebec presented a special problem. Considering public services alone, the Quebec level would be low in comparison with other provinces, and thereby increase the adjustment grant. The Commission concluded that "the notable work of the church in the fields of education and public welfare could neither be ignored nor measured in monetary terms." It assumed, therefore, that the contribution of the church had brought standards in these functions in Quebec up to the national average.

<sup>16</sup> Miscellaneous and special claims were presented to the Commission by certain provinces seeking compensation for adverse effects of federalism or other adjustments.

mary interest to students of federalism generally. The Commission did not consider that its proposals were "either centralizing or decentralizing in their combined effect," but believed that they would "conduce to the sane balance between these two tendencies which is the essence of a genuine federal system and, therefore, the basis on which Canadian national unity can most securely rest." Although the decisions underlying the proposals were made before the outbreak of war, the Commission regarded the basic recommendations as "sufficiently flexible to be adjusted to any situation which the war may produce." An admirable characteristic of the report is its skillful blending of the knowledge of the political scientist and the economist, a feature especially noticeable south of the international boundary where political scientists and economists tend to operate in separate compartments. Perhaps the chief contribution of the Commission to the understanding of federalism in general is to be found in its penetrating analysis of the effects of the division of jurisdiction on the functioning of the economic order under a federal system.

Whether the major recommendations of the Rowell-Sirois Report will be adopted remains to be seen.<sup>17</sup> Their consideration was scheduled for mid-January, 1941, at a Dominion-provincial conference.<sup>18</sup> Prime Minister Mackenzie King, in a letter addressed to the provincial premiers requesting their participation in the conference, urged the adoption of the recommendations as necessary to put Canada "in a position to pursue a policy which will achieve the maximum war effort and, at the same time, to lay a sound foundation for post-war reconstruction."<sup>19</sup> In view of this

<sup>17</sup> The Commission recommended that if the administration of a service or a tax should be transferred from one government to another it was desirable that "those who have administered the service or collected the tax in the past should do so in the future and that their skill and experience should not be lost to the nation or their personal expectation of continuous appointment be disappointed."

<sup>18</sup> If the conference should accept recommendations requiring amendment of the British North America Act, the method of adopting such amendment would have to be decided upon. The method of amendment of that Act has long been a contentious issue. (See *Report of the Special Committee on the British North America Act*, Ottawa, 1935.) The Act, a statute of the British Parliament, contains no provision for its amendment. It has customarily been amended by joint resolution of both houses of the Canadian Parliament addressed to the British Parliament. Some provinces, notably Nova Scotia, Saskatchewan, Manitoba, and British Columbia, would like to have amendment without recourse to the British Parliament. The British Parliament would undoubtedly approve such a method, but the provinces have never agreed upon the features of an amending process. The Commission expressed the opinion that the question of method of amendment of the British North America Act was outside its terms of reference, and that the Dominion and the provinces were the appropriate agencies to work out the procedure for bringing about changes.

<sup>19</sup> *Toronto Globe and Mail*, November 8, 1940, p. 8. It is generally expected that there will be considerable opposition to the recommendations for national adjustment grants, particularly by Ontario.

objective, it may be that the war will accelerate rather than retard the revamping of the Canadian federal structure.

LUELLA GETTYS.

*Baltimore, Maryland.*

**The Recent Parliamentary Elections in Sweden.** With the tense international situation as an ominous background, the regular quadrennial parliamentary elections for the lower house were held in Sweden in September, 1940. Four years ago, the autumn of 1936 witnessed spirited and warmly contested parliamentary elections in both Sweden and Norway.<sup>1</sup> Because Norway's constitution was amended in 1937 to provide for quadrennial rather than triennial elections, the autumn of 1940 would—save for the German invasion of the Norwegian democracy—have seen nation-wide parliamentary elections in both countries of the Scandinavian peninsula. With Sweden as the only Scandinavian nation remaining free and independent, it has been interesting to note what effect, if any, the tremendous pressures from the surrounding totalitarian states has had on democratic processes in the Swedish state.

Over a year ago, the Swedish cabinet was reorganized into a National Cabinet with all leading political parties represented. As the time for the elections approached, some of the minority parties expressed willingness to postpone the contest, even to the extent of ignoring the constitutional provision for quadrennial elections. The remarkable expression of confidence by the smaller parties in the largest party—the Social Democrats—was countered by an equally remarkable stand taken by the leader of the Social Democrats, Prime Minister Per Albin Hansson, who insisted that the democratic processes of a popular election should be continued. The prime minister's view was accepted by all parties, since it was felt by all leaders that in such a time of stress it would be an indication of democratic strength for the parliament to go to the people. All were agreed also that the parties which would, in normal times, be in opposition should continue as vital going concerns.

Because of the happy inter-party feeling, the contest has sometimes been referred to as a "gentlemen's election." It was agreed not to use posters, and the usual loud speakers on motor trucks were also not employed. The campaign was remarkably free from vituperation and mudslinging. Each political party, however, campaigned in a dignified manner for electoral support for its respective candidates. The relative mildness of the contest probably accounts for the slight decrease in the percentage of the electorate that went to the polls. The exact figure, in relation to the number of eligible voters, is not yet available, but indications are that about 68 per cent of all voters participated, as against a record of 74.5 per cent in 1936.

<sup>1</sup> See this REVIEW, Vol. 31, pp. 97-99 (Feb., 1937).

As might have been expected, the balloting resulted in a decided increase in the number of Social Democratic seats in the lower house. This well-organized party, which has made consistent gains in several previous elections, gained nineteen seats. The Agrarian party, which has co-operated closely with the Social Democrats, lost eight seats, the People's party lost four, the Conservatives two, the Communists two, and the Socialists three (which was the total number held by this party previous to the election). Thus the membership of the newly-elected chamber will be as follows: Social Democrats, 134; Conservatives, 42; Agrarians, 28; People's party, 23; Communists, 3. For the first time in Swedish history, the Social Democrats have a majority of the seats in the chamber. The great increase in Social Democratic seats and the resulting personal triumph of Mr. Hansson will apparently result in no changes whatever in the National (Coalition) Cabinet.

The total vote cast was 2,873,913, as against 2,917,511 in 1936. The Social Democrats made a gain of 16 per cent in the popular vote. The National Union (Fascist) party, which cast a handful of 26,741 votes in 1936, received scarcely any in 1940. The National Socialist party dropped from about 20,000 in 1936 to a negligible number in 1940. Among the members will be 17 women as opposed to 13 in the old house. Of the 230 members, 56 were chosen for the first time.

No members of the upper house were elected at this time. All such are chosen for eight-year terms, one-eighth each year by local electoral colleges.<sup>2</sup>

BEN A. ARNESON.

*Ohio Wesleyan University.*

<sup>2</sup> Most of the information on which this note is based was obtained from *Social-Demokraten*, *Svenska Dagbladet*, and *Dagens Nyheter* (dailies published in Stockholm) and from the *American Swedish Monthly* (published in New York). Copies of several issues of these were secured through the courtesy of the Swedish Legation in Washington.



## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

By vote of the Executive Council, the thirty-seventh annual meeting of the American Political Science Association will be held in New York City December 29-31, 1941, with headquarters at the Hotel Pennsylvania. The committee on program for this meeting consists of Francis G. Wilson (University of Illinois), chairman, W. Brooke Graves (Temple University), Herbert Emmerich (Public Administration Clearing House, Chicago), Harold H. Sprout (Princeton University), and O. Douglas Weeks (University of Texas). In building the 1941 program, the committee will, in so far as possible, adhere to the rule requiring that (except in the case of round-table leaders) no person shall appear on the program more than once.

Professor Robert C. Brooks, of Swarthmore College, and president of the American Political Science Association during the year 1940, died on February 2 of complications resulting from an operation early in January. A memorial note will appear in the next issue of the REVIEW.

Mr. Louis Brownlow, director of the Public Administration Clearing House and lecturer in political science at the University of Chicago, gave two lectures at the University in December on "The Executive Office of the President."

Professor Jacob Van der Zee, of the State University of Iowa, will offer courses on international relations, the common law, and political theory at the University of Colorado during the summer session of 1941.

Professor Eric C. Bellquist, of the University of California, addressed the annual meetings of the World Affairs Symposium at Seattle and the World Affairs Council at Tacoma, Washington, held in November, speaking on the subject of the position of northern Europe in the present world conflict.

Dr. George W. Bemis, recently associated with the Bureau of Governmental Research at the University of California at Los Angeles, has been appointed lecturer in political science at Occidental College. Dr. Bemis is also director of research and records project, W.P.A., for Los Angeles.

Professor Samuel C. May, director of the Bureau of Public Administration at the University of California, was appointed in June, 1940, to serve as executive vice-chairman of the California State Council of Defense.

Dean Emery E. Olson, of the University of Southern California, is serving as part-time consultant to the U. S. Office of Education on personnel problems growing out of national defense activities in industry and government.

Mr. Clement T. Malan, professor of political science in the Indiana State Teachers College, has been named state superintendent of schools in Indiana.

Dr. Robert Strausz-Hupe, former associate editor of *Current History*, has been appointed special lecturer in political science at the University of Pennsylvania.

At the State University of Iowa, members of the department of political science are delivering a series of evening lectures designed to acquaint freshmen with members of the department and to stimulate interest in the study of political science. The series was opened by Professor Kirk H. Porter, recently appointed head of the department.

Dr. Ward Stewart has resigned as assistant director of personnel in the U. S. Housing Authority to become chief personnel officer in the National Youth Administration. Dr. Stewart was formerly with the Tennessee Valley Authority in a research capacity, and more recently was a Littauer fellow in the Graduate School of Public Administration at Harvard University.

Dr. Ernest S. Griffith has resigned his position with the American University in order to become director of the Legislative Reference Service of the Library of Congress. Dr. Griffith served for five years as dean of the Graduate School and professor of political science at the American University. In his new position he succeeds Dr. Luther H. Evans, who has become chief assistant librarian.

Professor J. Alton Burdine, of the University of Texas, has been appointed vice-president of the University, with duties relating primarily to internal administration. Professor Burdine returned to the University in September after serving a year as administrative consultant to the administrator of the Federal Security Agency.

The leave of absence of Professor Floyd W. Reeves, of the departments of education and political science at the University of Chicago, has been extended through the winter, spring, and summer quarters of 1941, in order to enable him to continue his work with the National Advisory Defense Commission.

Professor Austin F. Macdonald, of the University of California, will spend the spring semester in South America, staying for some months in

Argentina to study its government. Dr. Victor Jones, research associate in the Bureau of Public Administration at the University, will offer the undergraduate course on municipal administration during Professor Macdonald's absence.

The fall dinner meeting of the Metropolitan Political Science Association was held at New Brunswick, New Jersey, on November 29, 1940, Rutgers University and the New Jersey College for Women serving as hosts. Dr. Edward M. Earle, of the Institute for Advanced Study, spoke on "Problems of National Defense of Interest to Political Scientists." Fifty-nine members and guests of the Association attended the meeting. The next meeting will be held at Hunter College, New York City, in the spring.

Ten graduate fellowships in the field of government management are offered by the University of Denver, under a grant from the Alfred P. Sloan Foundation, for the academic year beginning in September, 1941. The fellowships, awarded on a competitive basis, carry maximum stipends of \$100 a month for single persons and \$150 a month for married persons. The training period covers six quarters, from September, 1941, to March, 1943. Application forms may be obtained by addressing the Committee on Fellowships, Department of Government Management, School of Commerce, University of Denver. Applications must be filed not later than March 10, 1941.

Dr. Chester Lloyd Jones, professor of political science and commerce at the University of Wisconsin, died at Madison on January 13 at the age of fifty-nine. A graduate of the University of Wisconsin, Professor Jones did graduate work at Berlin and Madrid, and received his doctor's degree from the University of Pennsylvania in 1906. After serving four years as an instructor in political science at Pennsylvania (also as assistant editor of the *Annals of the American Academy of Political and Social Science*), he was called back in 1910 to Wisconsin, where he later succeeded Dr. Paul S. Reinsch as chairman of the political science department. From 1914 to 1917, he was secretary-treasurer of the American Political Science Association. In 1917, he became director of the bureau of foreign agents of the War Trade Board, and from 1919 to 1928 he served successively as commercial attaché at the American embassies at Madrid and Paris. In 1928, he returned to the University of Wisconsin, dividing his time between the department of political science and the school of commerce, and for five years (1930-35) serving also as director of the latter. His teaching and writing during these later years fell entirely in the field of Latin American affairs. His earlier books included *The Consular Service of the United States*, *Statute Law-Making*, and *The Caribbean In-*

terests of the United States, and his later ones, *Mexico and Its Reconstruction*, *Costa Rica*, and *Guatemala, Past and Present*.

The public service fellowship established by the former Women's Organization for National Prohibition Reform and administered by the faculty of Barnard College will be awarded this year to a woman candidate from Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, or Wyoming. The fellowship carries a stipend of \$1,300; and applications are to be addressed to Professor Willard Waller, of Barnard College, before March 1.

The 1940 meeting of the Southern Political Science Association was held at Furman University, Greenville, S. C., November 7-9, with sixty-five members in attendance. Round tables or other sessions were devoted to political theory, local government, Far Eastern affairs, and labor in the South. The American Political Science Association was represented officially by Professor Sigmund Neumann, of Wesleyan University, who spoke on "Leaders and Followers." Officers elected for the coming year are: president, Denna F. Fleming, Vanderbilt University; vice-president (in charge of program), James W. Fesler, University of North Carolina; secretary-treasurer (ex officio), Manning J. Dauer, University of Florida; recording secretary, Paul M. W. Linebarger; and as three new members of the Executive Council, James Hart, John Manning, and Cullen Gosnell.

**International Labor Organization at Montreal.** The year 1940 witnessed the establishment at Montreal of the principal headquarters of the International Labor Organization. On August 19, 1940, the Canadian Minister of Labor, Norman A. McLartey, announced that the government of Canada had indicated its willingness that personnel of the International Labor Office necessary to carry on the services of the Office be transferred temporarily to Canada.<sup>1</sup> McGill University agreed to provide the necessary office accommodations. The trek to Montreal, which began last July,<sup>2</sup> was preceded by persistent rumors that headquarters of the Organization would be established at Lisbon.<sup>3</sup> The move to the American continent was made with a view to enabling the Organization to maintain more effectively its ties with neutral countries, and, particularly, countries of the American continents. The personnel transferred from Geneva was between forty and fifty persons.<sup>4</sup> Only a very meagre skeleton staff was

<sup>1</sup> "Transfer of International Labor Office Personnel to Montreal," *Monthly Labor Review*, Vol. 51, No. 3 (Sept., 1940), p. 585.

<sup>2</sup> *New York Times*, July 4, 1940, 3: 7. See also, *ibid.*, Aug. 8, 1940, 13: 3.

<sup>3</sup> See, for instance, *New York Times*, July 4, 1940, 2: 7.

<sup>4</sup> "Transfer of International Labor Office Personnel to Montreal," *op. cit.* See, however, an interview with John G. Winant, director of the International Labor

retained in Geneva, and the remainder of the Office staff, numbering some 300 men and women,<sup>5</sup> was given the choice of resignation or dismissal.

The establishment of an office of the I.L.O. on one of the American continents had been foreshadowed long before it actually occurred. The outbreak of war in Europe on September 1, 1939, imposed a severe handicap upon the International Labor Office in Geneva in its communication with the outside world. Notwithstanding the difficulties which it encountered, however, the Office endeavored for nine months to maintain its services and functions from Geneva. Research continued. Among the studies which were carried on through the end of 1939 and into the first half of 1940 were those dealing with problems of organization of the labor market arising from the war; migration; the influence of war and mobilization on hours of work, rest periods, and conditions of women's work; the adjustment of wage rates to changing prices; methods of coöperation between public authorities, workers' organizations, and employers' organizations; the adaptation of social insurance to mobilization and war; family budgets; and the compensation and rehabilitation of men disabled in the war. The publication of the usual periodicals of the Office continued until June, 1940, and the exchange of publications with governments and non-governmental organizations is reported to have maintained a surprising continuity until about the same time.<sup>6</sup>

The governing body held its regularly scheduled meeting in February, 1940, and met again on April 22, 1940. The Committee of Experts, whose task it is to examine the annual reports of governments on the application of international labor conventions, held its annual meeting on April 29. The reports submitted to it numbered nearly 600.<sup>6</sup> As all of these were prepared and submitted after the outbreak of the European war, this was regarded as a heartening indication of the attention being given, even in war-time, to the social problems with which the I.L.O. deals. The ratification of international labor conventions also continued, although at a greatly reduced rate.

With the outbreak of war in Europe, it had been recognized by the governing body and its executive committee that the chief usefulness of the Organization would be rather in the continued study of and dissemination of information about labor problems and social conditions affecting labor standards than in the multiplication of international labor conventions. It was with this thought in mind, indeed, that the agenda of the

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Office, *New York Times*, Sept. 9, 1940, in which he was reported to have expressed the hope of transferring to Montreal "a large portion" of the staff.

<sup>5</sup> John S. Gambs, "The I.L.O. in War-time," *Monthly Labor Review*, Vol. 50, No. 5 (May, 1940), p. 1107.

<sup>6</sup> Information supplied by the Washington branch office.

International Labor Conference scheduled to meet in June, 1940, had been framed. The agenda had contained subjects for discussion rather than for action. The difficulties of carrying on research in Geneva, however, were not inconsiderable from the very outset of the war. They became greater as the area of war spread to additional European countries. Contacts with the rest of the world became subject to a variety of interruptions which threatened the usefulness of the Organization to neutral countries. The second regional conference of American states had been held in November, 1939, and had suggested lines of study and action by the I.L.O. in problems confronting the American states. Clearly, therefore, the Office had to seek establishment on one of the American continents.

It was the collapse of France that necessitated a sudden recognition of this need of transfer. At its sessions in April and June, 1939, the governing body had approved two reports from its emergency committee affirming that the Organization should endeavor to maintain the fullest possible activity, and that the Office should continue to function in its present premises unless this proved impossible. The events of May, 1940, settled the question. The session of the International Labor Conference scheduled to meet on June 5 was hastily postponed, as was the session of the governing body scheduled for June 1; meetings of various technical committees were suspended; and suitable headquarters for the Labor Office were sought in the American continents.

Although the I.L.O., in common with other international institutions, is thus drinking the lees of war, it is endeavoring not to neglect its opportunities for present service to neutral countries nor the problems of the future. The governing body has authorized the Office to begin studies of post-war problems which will confront the world upon the restoration of peace. These studies are necessary and should prepare the way for a more adequate handling of such problems than occurred after the First World War. The extent to which the Labor Office can maintain its publications, services, and studies, however, is necessarily dependent upon the limited staff and resources which it now possesses. Comparatively few records were transported from Geneva

SMITH SIMPSON.

*University of Pennsylvania.*

**Thirty-sixth Annual Meeting of the American Political Science Association.** The thirty-sixth annual meeting of the American Political Science Association was held in Chicago on Friday-Monday, December 27-30, 1940, with the Palmer House serving as headquarters. This was a joint meeting with the American Society for Public Administration, which held its second annual meeting at this time. Registrants numbered 1,130. There

were 403 registrants when the Association met in Chicago in 1936; 531 in Philadelphia in 1937; 555 in Columbus in 1938; and 1,232 in Washington, D. C., in 1939. Northwestern University and the University of Chicago served as hosts to the Associations, and the department of press relations of the University of Chicago had charge of publicity.

The first evening of the annual meeting was devoted to a dinner session commemorating the centenary of De Tocqueville's *Democracy in America*. The presidential addresses were given on the second evening at a joint session of the two societies. Robert C. Brooks spoke on "Reflections on the 'World Revolution' of 1940," and William E. Mosher on "Adjusting the Sights for Public Administration."

The addresses at the three luncheons were made by Francis Biddle, solicitor-general of the United States; John W. Bricker, governor of Ohio; and Senator Elbert D. Thomas of Utah. At the Sunday evening session, which was devoted to the subject of "Politics and Ethics," the three scheduled addresses were preceded by a radio broadcast on national defense by President Roosevelt, whose voice was heard by special arrangement in the Red Lacquer Room of the Palmer House. Monday afternoon was given over to an inspection trip to the Public Administration Clearing House located at 1313 East 60th Street, Chicago.

The program of 1940 constituted the most elaborate offering of subjects and participants in the history of this society. The joint program showed twelve sectional meetings and thirteen round tables, besides the general sessions at noon and evening. There were 345 participating persons on the program as compared with 264 in 1939 and 204 in 1938. Of the 345 participants, 224 were from the academic group and 121 from the non-academic group, including governmental officials. The program for the American Political Science Association was constructed by a committee under the chairmanship of W. Brooke Graves and for the American Society for Public Administration by a committee headed by Earl De Long. Both committees followed the recommendations of the Program Study Committee of 1939, under the chairmanship of Clarence A. Berdahl. Accordingly, a distinction was maintained between round tables and sections, with the purpose of eliminating the reading of all papers at round tables. The committee sought to draw into the sessions younger scholars as well as those of established reputation and to give particular emphasis to the critical problems of the current year. It was contemplated that the increase in number of round tables and sections would offer a wider selection of subjects to the members attending the annual meeting, provide more seating space for members, and give greater opportunity to members for active participation in the program, particularly in discussion from the floor.

New features of the program of 1940 were the one-listing rule and the

appointment of a secretary for each section and round table. In the past there has been criticism regarding the repetition of names of individual members on the program. There has been complaint that some members are crowded off the program by the double and triple appearance of certain members who occasionally fail even to appear at the annual meeting. In an effort to correct this situation, the Program Committee limited, with a few exceptions, all members to a single listing on the program. A secretary was attached to each section and round table in order to (a) assist the chairman, (b) gather information which will prove helpful in constructing the program of 1941, and (c) develop a technique for the publication of the proceedings of the annual meeting if and when such publication is undertaken.

The joint program, revised to show only those persons who actually participated in the various sessions, was as follows:<sup>1</sup>

**Friday, December 27, at 9:30 A.M.**

#### SECTIONAL MEETINGS

##### (1) POLITICAL THEORY (*First Session*)

*Chairman:* Benjamin F. Wright, Harvard University

*Secretary:* Walter H. Bennett, University of Alabama

*General Topic:* Right and/or Utility

*"The Impact of German Idealism in America,"* Thomas I. Cook, University of Washington.

*"Benthamism in England and America,"* Paul A. Palmer, Kenyon College.

*"Right and Utility in the Opinions of Chief Justice Fuller,"* Irving Dilliard, Editorial Staff, *St. Louis Post-Dispatch*.

*Discussion:* C. B. Robson, University of North Carolina.

##### (2) LATIN AMERICAN AFFAIRS (*First Session*)

*Chairman:* Chester Lloyd Jones, University of Wisconsin

*Secretary:* D. Barlow Burke, Drexel Institute of Technology

*General Topic:* The Good Neighbor Policy and Current War Problems

*"Latin American Attitude toward Direct Investment by Foreigners,"* William S. Culbertson, Washington, D. C.

*"The Position of the United States Navy in the Caribbean,"* Rear Admiral John Downes, United States Navy, Commandant, Ninth Naval District, Great Lakes, Illinois.

*"The Pan American Conferences of Lima, Panama, Havana,"* J. Lloyd Mechem, University of Texas.

*"Political Developments in Venezuela and Colombia,"* John I. B. McCulloch, Editor, *Inter-American Quarterly*.

<sup>1</sup> The following signs are used preceding announcements in the program to indicate joint sponsorship of meetings: (\*) American Political Science Association and American Society for Public Administration; (†) American Political Science Association and National Council for the Social Studies; (‡) American Political Science Association and American Association for Labor Legislation.



(3) FAR EASTERN AFFAIRS (*First Session*)*Chairman:* Harold S. Quigley, University of Minnesota*Secretary:* Eugene H. Miller, Ursinus College*General Topic:* New Aspects of Government in Japan*"Cabinet and Camp,"* Chitoshi Yanaga, University of California at Berkeley.*"Parties and Parliament,"* Wilson Leon Godshall, Lehigh University.*"Fiscal Policy in Japan,"* James H. Shoemaker, Brown University.*"Business and Government,"* William M. McGovern, Northwestern University.*"Recent Administration in Korea,"* Harold J. Noble, University of Oregon.(4) POLITICAL PARTIES AND ELECTIONS (*First Session*)*Chairman:* E. E. Schattschneider, Wesleyan University*Secretary:* J. B. Shannon, University of Kentucky*General Topic:* The Negro in American Politics*"The Major Parties and the Negro Voter in the Northern States in the Campaign of 1940,"* Harold F. Gosnell, University of Chicago.*"The Practical Operation of the System for Disfranchising Negroes in the Southern States,"* Ralph J. Bunche, Howard University.*"The Negro in Alabama Politics,"* Charles W. Smith, Jr., University of Alabama.*"Recent Trends in the Political Behavior of Negroes in New York City,"* George Snowden, Shaw University.*"The Negro in Philadelphia Politics,"* Frances Reinhold Fussell, Swarthmore College.*"The Negro in Pittsburgh Politics,"* Elmer D. Graper, University of Pittsburgh.*"Negro Voting Behavior in Detroit,"* Edward H. Litchfield, Brown University.*Commentator:* Thomas C. Donnelly, University of New Mexico.(5) INTERNATIONAL LAW AND RELATIONS (*First Session*)*Chairman:* Frederick S. Dunn, Yale University*Secretary:* William T. R. Fox, Temple University*General Topic:* International Law and the Changing International Order*"International Law and Totalitarian War,"* Philip C. Jessup, Columbia University.*"International Law and the Totalitarian State,"* Quincy Wright, University of Chicago.*"International Law and Totalitarian Economics,"* Gerhart Niemeyer, Princeton University.*"International Organization and the Totalitarian State,"* Percy W. Corbett, McGill University.(6) PUBLIC LAW (*First Session*)*Chairman:* Oliver P. Field, Indiana University*Secretary:* John H. Marion, Rutgers University*General Topic:* The Place of Public Law in the Present Curriculum*Discussion:* James Hart, University of Virginia; Edward S. Corwin, Princeton University; Harvey Mansfield, Yale University; Ben A. Arneson, Ohio Wesleyan University; Francis R. Aumann, Ohio State University; Charles Aikin, University of California; Llewellyn Pfankuchen, University of Wisconsin; Earl G. Latham, University of Minnesota; Spencer D. Parratt, Syracuse University; David Fellman, University of Nebraska; F. F. Blachly, Brookings Institution; George C. S. Benson, University of Michigan; L. B. Sims, United States Bureau

of Census; H. L. Hamilton, Ohio State University; Cullen B. Gosnell, Emory University; John A. Vieg, Iowa State College.

(7) STATE GOVERNMENT (*First Session*)

*Chairman:* Lloyd M. Short, University of Minnesota

*Secretary:* William H. Coombs, Michigan State College

*General Topic:* An Appraisal of Earlier and More Recent Efforts to Integrate State Administration through Central Staff Agencies Responsible to the Governor

"Alabama," Roscoe C. Martin, University of Alabama.

"Indiana," Frank G. Bates, University of Indiana.

"Kentucky," John W. Manning, University of Kentucky.

"Minnesota," Leslie M. Gravlín, Commissioner of Administration, State of Minnesota. (Paper read by proxy.)

"Pennsylvania," Edward B. Logan, Budget Secretary, Commonwealth of Pennsylvania.

"Rhode Island," Mathew C. Mitchell, Brown University.

"Canadian Provinces," Hugh McD. Clokie, University of Manitoba.

*Discussion Leader:* Harvey Walker, Ohio State University.

(8) GOVERNMENT AND BUSINESS (*First Session*)

*Chairman:* Charles C. Rohlfing, University of Pennsylvania

*Secretary:* John H. Ferguson, Pennsylvania State College

*General Topic:* Current Problems of Business Regulation

"T.V.A.—A Case Study of Government Regulation," John G. Hervey, Temple University School of Law.

"Regulative Policies of the Securities and Exchange Commission," William M. Blaisdell, Securities and Exchange Commission.

"Some Administrative Aspects of Industrial Mobilization," E. Pendleton Herring, Harvard University.

"The Governmental Corporation as an Administrative Device," John McDiarmid, University of Southern California.

"Government Policy in the Control of Credit," David M. French, University of Michigan.

"Legislative Barriers to Marketing," John H. Cover, National Resources Planning Board.

(9) LEGISLATION AND LEGISLATIVE PROCEDURE (*First Session*)

*Chairman:* Frederic H. Guild, University of Kansas, and

Director, Research Department, Kansas Legislative Council

*Secretary:* Mona Fletcher, Kent State University

*General Topic:* Ideology and Practice in State Legislatures

"The State Legislature and Democratic Foundations," Charles S. Hyneman, Louisiana State University.

"Missing Rungs in the Legislative Ladder," Sam Wilson, Kansas State Chamber of Commerce.

"The Pennsylvania Experiment," A. Alfred Wasserman, Pennsylvania Joint State Government Commission.

"Informational Aids to the California Legislature," Samuel C. May, Bureau of Public Administration, University of California.

*Discussion:* Luther H. Evans, Library of Congress; Edwin E. Witte, University of Wisconsin; and others.

## (10) CITIZEN ORGANIZATION

*Chairman:* Harold M. Dorr, University of Michigan

*Secretary:* Russell H. Ewing, University of Denver

*General Topic:* Recent Developments in Citizen Organization

*"Citizen Organization: A Tool for Democratic Control,"* Howard Kline, University of Maryland.

*"Citizen Organizations: Success or Failure,"* Allen H. Seed, Minneapolis Civic Council.

*"Financing Citizen Organizations,"* Albert Lepawsky, Federation of Tax Administrators.

*"Publicity and Public Relations,"* Roy V. Peel, Indiana University.

Friday, December 27, at 12:30 P.M.

## SUBSCRIPTION LUNCHEON

*Presiding Officer:* H. Clarence Nixon, Vanderbilt University  
and Second Vice-President of the Association

*Speaker:* Francis Biddle, Solicitor General of the United States.

*Subject:* Government and the Public.

Friday, December 27, at 2:30 P.M.

## SECTIONAL MEETINGS

(11) EUROPEAN AFFAIRS (*First Session*)

*Chairman:* Harold Zink, DePauw University

*Secretary:* John D. Tomlinson, Wabash College

*General Topic:* The Effects of the War on the Governments of Europe

*"The Preservation of Parliamentary Government in England,"* Eugene P. Chase, Lafayette College.

*"The Effects of the War on the Government of Germany,"* Fritz Morstein Marx, Queens College.

*"The Effects of the War on the Political Institutions of the U.S.S.R.,"* John N. Hazard, Columbia University.

*"Impact of the War on the Government of Italy,"* William Ebenstein, University of Wisconsin.

*Discussion Leader:* Rushton Coulborn, Atlanta University.

## (12) NATIONAL DEFENSE

*Chairman:* William Y. Elliott, Harvard University

*Secretary:* Mary Earhart Dillon, Northwestern University

*"American Defense: Critique of Our Policy,"* Brooks Emeny, Council on Foreign Relations, Cleveland, Ohio.

*"American Defense: Strategy,"* Major George Fielding Eliot, Columbia Broadcasting System.

*"American Defense: Canada and the United States,"* A. R. M. Lower, United College, Winnipeg, Canada.

*Discussion Leader:* Elbert D. Thomas, United States Senate.

Friday, December 27, at 7:00 P.M.

#### SUBSCRIPTION DINNER

Commemorating the Centenary of De Tocqueville's  
*Democracy in America*

*Presiding Officer:* President Robert C. Brooks, Swarthmore College

*Chairman:* Phillips Bradley, Queens College

"*A Frenchman's View of De Tocqueville's 'Democracy in America'*," Pierre Cot, University of Rennes, formerly French Minister of Commerce.

"*De Tocqueville's Observations in Jacksonian America*," G. W. Pierson, Yale University.

"*De Tocqueville's Democracy—A Century Later*," Charles E. Merriam, University of Chicago.

"*Democracy*," T. V. Smith, former Congressman-at-Large from Illinois.

Saturday, December 28, at 8:00 A.M.

#### BREAKFAST MEETINGS

- (1) PENNSYLVANIA POLITICAL SCIENCE ASSOCIATION

*Chairman:* W. Brooke Graves, Temple University.

- (2) MANAGERIAL COMMITTEE OF THE MIDWEST CONFERENCE OF POLITICAL SCIENTISTS

*Chairman:* Francis G. Wilson, University of Illinois.

- (3) PI SIGMA ALPHA

*Chairman:* John W. Manning, University of Kentucky.

- (4) COMMITTEE ON THE SOCIAL STUDIES

*Chairman:* Phillips Bradley, Queens College.

Saturday, December 28, at 9:30 A.M.

#### ROUND TABLES

- (1) PUBLIC OPINION AND PROPAGANDA (*First Session*)

*Chairman:* Harwood L. Childs, Princeton University

*Secretary:* Donald S. Bussey, Princeton University

*General Topic:* Public Opinion Problems in a Democracy

"*Qualitative Opinion Surveys*," Archibald M. Crossley, New York City.

"*Political Forecasts, Polls, and Patterns*," Louis H. Bean, U. S. Department of Agriculture.

"*Public Opinion—Its Limitations and Capabilities*," Charles H. Titus, University of California at Los Angeles.

"*The Sociological Approach to the Study of Public Opinion*," William Albigh, University of Illinois.

"*Sound and Unsound Practices in Government Public Relations*," Arch A. Mercey, Office of Government Reports, Executive Office of the President.

"*Rôle of Public Opinion in Determining Public Policy*," Carl J. Friedrich, Harvard University.

- \* (2) PROBLEMS OF PERSONNEL ADMINISTRATION (*First Session*)

*Chairman:* Arthur S. Flemming, United States Civil Service Commission

*Secretary:* J. Donald Kingsley, Antioch College

*General Topic:* The Contribution that Colleges and Universities Can Make in Meeting the Personnel Needs of Federal, State, and Local Governments in an Emergency Period

*Discussion:* Frederick M. Davenport, Federal Council of Personnel Administration; Winston B. Stephens, United States Civil Service Commission; Fred J. Kelly, Higher Education Division, United States Office of Education; Harvey Walker, Ohio State University; Paul Kern, New York City Civil Service Commission.

\*‡(3) ADMINISTRATION UNDER AMERICAN FEDERALISM (*First Session*)

*Chairman:* Arthur W. Macmahon, Columbia University

*Secretary:* Nicholas P. Mitchell, Furman University

*General Topic:* Intergovernmental Collaboration in Defense

*"The Division of State and Local Coöperation and the State Councils of Defense,"* Aldin Rosenman, National Defense Advisory Commission.

*"The Defense Impact and Intergovernmental Relations in Housing,"* Coleman Woodbury, National Association of Housing Officials.

*"The Federal-State Conference on Law Enforcement—Some Problems of National Defense,"* Harry C. Nail, Jr., National Association of Attorneys General.

*Discussion:* William D. Carey, Columbia University; Hubert R. Gallagher, Council of State Governments; Samuel C. May, University of California.

(4) TEACHING PROBLEMS IN POLITICAL SCIENCE (*First Session*)

*Chairman:* Francis O. Wilcox, University of Louisville

*Secretary:* Ralph E. Page, Bucknell University

*General Topic:* The Political Science Teacher and the World Crisis

*Discussion:* H. Schuyler Foster, Jr., Ohio State University; James K. Pollock, University of Michigan; John A. Vieg, Iowa State College; Kirk H. Porter, University of Iowa; Rodney L. Mott, Colgate University; Grayson L. Kirk, Columbia University.

\*(5) THE PROBLEM OF THE PUBLIC DEBT (*First Session*)

*Chairman:* Simeon E. Leland, University of Chicago

*Secretary:* C. Herman Pritchett, University of Chicago

*General Topic:* Should the National Debt Be Limited?

*"Pros and Cons of National Debt Limitation,"* Lawrence H. Seltzer, Wayne University. (Paper read by proxy.)

*"The Budgetary Problem from a Cyclical Point of View,"* Gerhard Colm, United States Bureau of the Budget.

*"The Economic Limit and Significance of the National Debt,"* Mabel Newcomer, Vassar College.

*"Political Problems Created by National Debt,"* George C. S. Benson, University of Michigan.

*Discussion:* Luther Gulick, Institute of Public Administration; Paul Studenski, New York University; Harold Smith, Director of the Budget.

(6-a) AMERICAN FOREIGN POLICY

*Chairman:* Walter H. C. Laves, University of Chicago

*Secretary:* James T. Watkins, IV, University of Chicago

*General Topic:* Military Policy and Foreign Policy

*"The Traditional Relation between Military and Foreign Policy in the United States."*

*"Limits Imposed on Our Foreign Policy by the Size of Our Present Military Force."*

*"For What Kind of a Foreign Policy Should Our Military Force Be Built?"*

*"The Relation between the Military and Non-Military Aspects of the American Defense Problem."*

*Discussion:* Edward Mead Earle, Institute for Advanced Study; Major George Fielding Eliot, Columbia Broadcasting System; William Y. Elliott, Harvard University; Walter R. Sharp, College of the City of New York; Harold H. Sprout, Princeton University; Shepard L. Witman, University of Omaha.

**\*(7) LOCAL GOVERNMENT (First Session)**

*Chairman:* Charles M. Kneier, University of Illinois

*Secretary:* James C. Charlesworth, Institute of Local and State Government, University of Pennsylvania

*General Topic:* Some Aspects of the Municipal Revenue Problem

*"General Property Tax Limitation,"* Arthur W. Bromage, University of Michigan.

*"The Final Disposition of Tax Delinquent Lands,"* Carl H. Chatters, Municipal Finance Officers' Association.

*"New Sources of Municipal Revenue,"* Stuart A. MacCorkle, University of Texas.

*"In Lieu Payments by the National Government to State and Local Governments,"* Lawrence L. Durisch, Tennessee Valley Authority.

*"Financial Effect on Local Governments of the Changing Relationships between Federal, State, and Local Governments,"* Patterson H. French, Social Science Research Council, Committee on Public Administration.

**\*(8) PUBLIC REPORTING (First Session)**

*Chairman:* James L. McCamy, United States Department of Agriculture

*Secretary:* Nathan Leites, University of Chicago

*General Topic:* Measurement

*"Research in Attitudes as Related to Public Reporting,"* Herman C. Beyle, Syracuse University.

*"Relation of Measurement to Policy in Reporting,"* John Corson, Social Security Board.

*"Opinion Measurement in Administration,"* Rensis Likert, Program Surveys Division, United States Bureau of Agricultural Economics.

**(9) RELATION OF POLITICAL SCIENCE TO THE OTHER SOCIAL SCIENCES  
(First Session)**

*Chairman:* Ernest S. Griffith, Library of Congress

*Secretary:* Gabriel A. Almond, Brooklyn College

*General Topic:* The Sphere of Political Science

During the past year, a small group has been working on a draft report dealing with the scope of the phenomena which the political scientist may regard as his peculiar sphere. This report is available in advance to any Association members desiring to participate in the discussion, and will be formally presented at the meeting by the members of the group, which includes: Marshall E. Dimock, Lewis B. Sims, A. Gordon Dewey, Brooklyn College, and the Chairman. The discussion will center around the report.

*Discussion:* Paul W. Ward, Syracuse University.

\*(10) GOVERNMENTAL ASPECTS OF NATIONAL PLANNING (*First Session*)

*Chairman:* George B. Galloway, National Economic and Social Planning Association

*Secretary:* Frank P. Bourgin, Duluth State Teachers College

*General Topic:* Planning Activities in the Federal Government

*"The Process of Plan-Making in the National Resources Planning Board,"* Charles E. Merriam, University of Chicago.

*"Over-All Financial Planning through the Bureau of the Budget,"* Arthur N. Holcombe, Harvard University.

*"Administrative Aspects of Agricultural Planning,"* Leon O. Wolcott, United States Department of Agriculture.

(11) A POST-MORTEM OF THE 1940 ELECTION

*Chairman:* E. Allen Helms, Ohio State University

*Secretary:* Belle Zeller, Brooklyn College

*"The 1940 Election and the Pacific Coast Area,"* Thomas S. Barclay, Stanford University.

*"Some Problems of Campaign Strategy in 1940,"* Earl DeLong, Northwestern University.

*"The Place of the Press in the 1940 Election,"* Irving Dilliard, Editorial Staff, *St. Louis Post-Dispatch*.

*"Party Finance in 1940,"* Louise Overacker, Wellesley College.

*"Partisanship and the Balance of Power,"* Arthur N. Holcombe, Harvard University.

*"What Issues Have Survived the Election?,"* Francis W. Coker, Yale University.

*"The Effect of the Election on the Political Parties,"* Clarence A. Berdahl, University of Illinois.

\*(12) BUDGET ADMINISTRATION AND INTERRELATIONSHIPS (*First Session*)

*Chairman:* Donald C. Stone, Executive Office of the President, Bureau of the Budget

*Secretary:* Horace Wilkie, Executive Office of the President

*General Topic:* Functions and Internal Administration of Budget Agencies

*Discussion:* Rowland A. Egger, Director of the Budget, Commonwealth of Virginia; Herbert Emmerich, Public Administration Clearing House, Chicago; Kenneth Dayton, Director of the Budget, New York City; William A. Jump, United States Department of Agriculture; Robert F. Steadman, Syracuse University; John Edy, Federal Works Agency; John P. Millett, Social Science Research Council; William A. Sponsler, III, Assistant Budget Secretary, Commonwealth of Pennsylvania; Paul Ager, Tennessee Valley Authority; David L. Robinson, Jr., Public Administration Service, Chicago.

Saturday, December 28, at 12:30 P.M.

SUBSCRIPTION LUNCHEON—JOINT SESSION

American Political Science Association and American Society for Public Administration

*Presiding Officer:* William E. Mosher, Syracuse University

*Subject:* Recent Trends in State Administration

*Speaker:* Governor John W. Bricker of Ohio.

Saturday, December 28, at 2:30 P.M.

## SECTIONAL MEETINGS

### (1) POLITICAL THEORY (*Second Session*)

*Chairman:* Benjamin F. Wright, Harvard University

*Secretary:* Walter H. Bennett, University of Alabama

*General Topic:* Agrarianism and Political Theory

*"Proudhon and American Agrarianism,"* Frederick M. Watkins, Cornell University.

*"The A.A.A. Experience and Guild Socialist Theory,"* John M. Gaus, University of Wisconsin.

*"The Theory of Agricultural Democracy,"* M. L. Wilson, United States Department of Agriculture.

*Discussion:* John D. Lewis, Oberlin College.

### (2) LATIN AMERICAN AFFAIRS (*Second Session*)

*Chairman:* Chester Lloyd Jones, University of Wisconsin

*Secretary:* D. Barlow Burke, Drexel Institute of Technology

*General Topic:* Political Developments in Latin America

*"Economic Coöperation by the American Republics,"* D. Maynard Phelps, University of Michigan.

*"Political Prospects in Mexico,"* Edith C. Bramhall, Colorado College.

*"Executive Power in Central America,"* R. H. Fitzgibbon, University of California at Los Angeles.

*"Intermunicipal Coöperation in the Americas,"* Albert Lepawsky, University of Chicago.

*"Totalitarian Activities in Latin America,"* Simon G. Hanson, Economist, National Defense Advisory Commission.

### (3) FAR EASTERN AFFAIRS (*Second Session*)

*Chairman:* Harold S. Quigley, University of Minnesota

*Secretary:* Eugene H. Miller, Ursinus College

*General Topic:* New Aspects of Government in China

*"Chiang, Wang, and the Kuomintang,"* Paul M. A. Linebarger, Duke University. (Paper read by proxy.)

*"Administration at Peking,"* George E. Taylor, University of Washington. (Paper read by proxy.)

*"Communism and the People,"* Philip J. Jaffe, Editor, *Amerasia*.

*"Mongolia and Manchuria,"* William B. Ballis, Ohio State University.

*"The Shanghai Settlements,"* H. Arthur Steiner, University of California at Los Angeles.

### (4) POLITICAL PARTIES AND ELECTIONS (*Second Session*)

*Chairman:* E. E. Schattschneider, Wesleyan University

*Secretary:* J. B. Shannon, University of Kentucky

*General Topic:* Public Opinion Polls and Straw Votes

*"Polls and Sampling Principles,"* S. S. Wilks, Princeton University.

*"Some Technical Aspects of the Public Opinion Polls,"* John K. Tibby, American Institute of Public Opinion.

*"America Faces the War; A Study in Public Opinion,"* Hadley Cantril, Director of the Princeton Public Opinion Research Project.



"*The Trends Theory of Forecasting Elections*," Louis H. Bean, United States Department of Agriculture.

"*The British Institute of Public Opinion*," Henry W. Durant, British Institute of Public Opinion.

(5) INTERNATIONAL LAW AND RELATIONS (*Second Session*)

*Chairman:* Robert R. Wilson, Duke University

*Secretary:* William T. R. Fox, Temple University

*General Topic:* Factors in International Reconstruction

"*The Political Basis of Federation*," William P. Maddox, University of Pennsylvania.

"*Labor's Part in War and Reconstruction*," Marshall E. Dimock, Immigration and Naturalization Service, United States Department of Justice, former Assistant Secretary of Labor.

"*The German Conception of Hegemony*," Eric Voegelin, University of Alabama.

*Discussion:* Conley H. Dillon, Marshall College; Dean E. McHenry, University of California at Los Angeles; Grayson L. Kirk, Columbia University; Lashley G. Harvey, University of New Hampshire.

‡(6) PUBLIC LAW (*Second Session*)

*Chairman:* Charles S. Ascher, Social Science Research

Council, Committee on Public Administration

*Secretary:* John H. Marion, Rutgers University

*General Topic:* The Problem of Administrative Discretion and the Walter-Logan Bill

*Discussion:* Frederick F. Blachly, Brookings Institution; Walter F. Dodd, Dodd and Matheny, Chicago; Ralph F. Fuchs, Washington University Law School; Martin Philipsborn, Jr., Division of Revenue, Illinois State Department of Finance.

(7) STATE GOVERNMENT (*Second Session*)

*Chairman:* Hubert R. Gallagher, Council of State Governments

*Secretary:* William H. Combs, Michigan State College

*General Topic:* Recent Developments in Interstate Cooperation

"*Progress in Interstate Relations in the East*," Frederick L. Zimmerman, Hunter College.

"*Progress in Interstate Relations on the Pacific Coast*," Victor Jones, University of California.

"*Progress in Interstate Relations in the South*," Weldon Cooper, University of Alabama.

"*What We Can Learn from Canada—Interprovincial Cooperation in the Dominion*," Alex Skelton, Executive Secretary of the Royal Commission.

"*Methods of Settling Disputes Between State Governments*," William E. Treadway, Indiana Commission on Interstate Cooperation.

"*The Work of the Council of State Governments*," Frank Bane, Council of State Governments. (Paper read by proxy.)

(8) GOVERNMENT AND BUSINESS (*Second Session*)

*Chairman:* Charles C. Rohlfing, University of Pennsylvania

*Secretary:* John H. Ferguson, Pennsylvania State College

*General Topic:* Government and Business in a Preparedness Economy

"*Government and Industrial Mobilization*," Caroline Ware, Advisory Commission to the Council on National Defense.

"*The Economics of Industrial Mobilization*," Myron H. Umbreit, Northwestern University.

"*Railroads and a Preparedness Economy*," Lewis C. Sorrell, University of Chicago.

"*Effect of National Defense on a Housing Program*," Edward W. Carter, University of Pennsylvania.

"*Government Price Control Policies*," Ford P. Hall, Indiana University.

(9) LEGISLATION AND LEGISLATIVE PROCEDURE (*Second Session*)

*Chairman*: Frederic H. Guild, University of Kansas

*Secretary*: Mona Fletcher, Kent State University

*General Topic*: Improving the Bicameral System in the States

"*The Problem of Reapportionment*," Charles W. Shull, Wayne University.

"*The Essential Features of a Model Bicameral Legislature*," O. Douglas Weeks, University of Texas.

"*De Facto Unicameralism*," Frank E. Horack, Jr., Indiana University.

*Discussion*: C. I. Winslow, Goucher College; A. R. Hatton, Northwestern University, and others.

(11) EUROPEAN AFFAIRS (*Second Session*)

*Chairman*: Harold Zink, DePauw University

*Secretary*: John D. Tomlinson, Wabash College

*General Topic*: The Effects of the War on the Governments of Europe

"*France*," J. G. Heinberg, University of Missouri.

"*Norway and Sweden*," A. G. Ronhovde, Rutgers University.

"*The Balkans*," Joseph S. Roucek, Hofstra College.

"*Latvia, Lithuania, and Esthonia*," Max M. Laserson, formerly of the University of Petrograd and the Economic Institute of Riga.

"*Germany*," Taylor Cole, Duke University.

"*England*," William H. Wickwar, Rockford College.

"*The U.S.S.R.*," Bertram W. Maxwell, Washburn College.

"*France*," Egon Wertheimer, formerly, League of Nations Secretariat.

Saturday, December 28, at 5:00 P.M.

Dinner, Board of Editors, PUBLIC ADMINISTRATION REVIEW

Saturday, December 28, at 6:00 P.M.

Dinner, Board of Editors, AMERICAN POLITICAL SCIENCE REVIEW

Saturday, December 28, at 8:00 P.M.

PRESIDENTIAL ADDRESSES—JOINT SESSION

American Political Science Association and American  
Society for Public Administration

*Presiding Officer*: Francis W. Coker, Yale University

"*Adjusting the Sights for Public Administration*," William E. Mosher, Syracuse University, President, American Society for Public Administration.

"*Reflections on the 'World Revolution' of 1940*," Robert C. Brooks, Swarthmore College, President, American Political Science Association.

**Saturday, December 28, at 9:30 P.M.**

**\*SMOKER**

*Hosts:* Northwestern University and University of Chicago  
Members and guests of both societies are cordially invited to be present

**Sunday, December 29, at 9:00 A.M.**

Breakfast Meeting, State Government Committee, National Municipal League

**Sunday, December 29, at 9:00 A.M.**

**BREAKFAST CONFERENCES—American Society for Public Administration**

**(1) THE REVENUE SIDE OF THE BUDGET**

*Chairman:* Leslie M. Gravlin, Commissioner of Administration, State of Minnesota

*Reporter:* I. M. Labovitz, Illinois State Tax Commission

*Discussion:* Kenneth Dayton, City of New York; Frederic H. Guild, Kansas State Legislative Council; George W. Mitchell, Illinois State Tax Commission; Fladger Tannery, National Association of State Auditors, Comptrollers, and Treasurers; Albert W. Lepawsky, National Federation of Tax Administrators; Paul Studenski, New York University; Clyde Reeves, Commissioner of Revenue, Commonwealth of Kentucky; William A. Sponsler, III, Assistant Budget Secretary, Commonwealth of Pennsylvania; Gerhard Colm, United States Bureau of the Budget; Rowland A. Egger, Director of the Budget, Commonwealth of Virginia.

**(2) MEASUREMENT OF THE QUALITIES OF ADMINISTRATORS**

*Chairman:* Leonard D. White, University of Chicago

*Reporter:* Harvey Sherman, University of Chicago

*"Progress Reports on Research,"* L. L. Thurstone, University of Chicago; Patterson H. French, Committee on Public Administration.

*Comments and discussion:* Ralph J. Tyler, University of Chicago, and Albert Blankenship, Committee on Public Administration.

*"Report on Administrative Biographies,"* George C. S. Benson, University of Michigan.

*"Improved Administrative Procedures to Develop Administrative Ability,"* Paul Kern, New York City Civil Service Commission; Leonard D. White, University of Chicago.

**(3) PROBLEMS OF OFFICE MANAGEMENT**

*Chairman:* Gordon Clapp, General Manager, Tennessee Valley Authority

*Reporter:* Leonard F. Reichle, Tennessee Valley Authority

*Discussion:* Arnold Brecht, New School for Social Research; Robert Biren, Minnesota State Civil Service Department; John J. Corson, Social Security Board; Robert P. Brecht, Wharton School of Finance and Commerce, University of Pennsylvania; Dorsey W. Hyde, Jr., The National Archives; Arthur W. Macmahon, Columbia University.

**(4) RESEARCH IN PUBLIC ADMINISTRATION**

Sponsored by the Society's Committee on Research

*Chairman:* William Anderson, University of Minnesota

*Reporter:* Charles S. Ascher, Social Science Research Council

The theme of this session was: "Wanted: A Research Program for the Society."

Besides the chairman, the following members of the Committee on Research participated: Joseph P. Harris, Northwestern University; Henry McFarland, New York State Civil Service Commission; Harold Seidman, Department of Investigation of the City of New York.

Sunday, December 29, at 2:30 P.M.

BUSINESS MEETING—American Political Science Association

*Presiding Officer:* President Robert C. Brooks, Swarthmore College

GENERAL SESSION—American Society for Public Administration

*Presiding Officer:* Louis Brownlow, Public Administration Clearing House

*Reporter:* Joseph P. Harris, Northwestern University

*General Topic:* The Executive Office of the President

*Speakers:*

"*The Bureau of the Budget*," Harold D. Smith.

"*The National Resources Planning Board*," Charles E. Merriam.

"*The Liason Office for Personnel Management*," William H. McReynolds. (Paper read by G. Lyle Belsley.)

"*The Office of Government Reports*," Lowell Mellett. (Paper read by Katherine Blackburn.)

"*Office for Emergency Management*," William H. McReynolds. (Paper read by G. Lyle Belsley.)

*Summary:* Luther Gulick, Institute of Public Administration.

Sunday, December 29, at 4:30 P.M.

TEA—For women members and wives of members of the American Political Science Association and the American Society for Public Administration and their guests. Hostesses: Mrs. Clifton M. Utley and Mrs. George G. Bogert, President of the Illinois League of Women Voters, at the home of Mrs. Clifton M. Utley, 5827 South Blackstone Avenue, Chicago.

Sunday, December 29, at 8:00 P.M.

BUSINESS MEETING—American Society for Public Administration

*Presiding Officer:* President William E. Mosher, Syracuse University

Agenda included: reports of officers of the Society, reports of officers of local chapters, election of officers of the Society, discussion of problems of chapter organization, and discussion of problems of the *Public Administration Review*.

GENERAL SESSION—American Political Science Association

*Presiding Officer:* Francis G. Wilson, University of Illinois

*General Topic:* Politics and Ethics

"*Democratic Ends and Totalitarian Means*," Max Lerner, Williams College.

"*Psychology Looks at Politics and Ethics*," Harold D. Lasswell, Washington School of Psychiatry.

"*Ethics and Political Intervention in the Field of Social Action*," Father John A. Ryan, National Catholic Welfare Conference, Washington, D. C.

Monday, December 30, at 8:00 A.M.

# BREAKFAST MEETING

## (1) TRAINING FOR AMERICAN CITIZENSHIP IN SCHOOLS AND COLLEGES

Sponsored jointly by the American Political Science Association  
and the National Council for the Social Studies

*Chairman:* John Haefner, Acting Head of Social Studies,  
University High School, State University of Iowa

*Secretary:* Ralph E. Page, Bucknell University

*General Topic:* Materials for Citizenship Training

*"Materials Which Develop Social Insights,"* Mabel Snedaker, Supervisor of Social Studies, University Elementary School, State University of Iowa.

*"Tools for Building Citizens in High Schools,"* Howard Cummings, Clayton High School, Clayton, Missouri.

*"The Role of Teacher Training Institutions,"* Hilda Watters, Western Illinois State Teachers College.

*"Cases and Situations Involving Civil Liberties,"* Louis E. Frechtling, Research Assistant, American Political Science Association's Committee on the Social Studies.

Monday, December 30, at 9:30 A.M.

# ROUND TABLES

## (1) PUBLIC OPINION AND PROPAGANDA (*Second Session*)

*Chairman:* Harwood L. Childs, Princeton University

*Secretary:* Donald S. Bussey, Princeton University

*General Topic:* World War Propaganda, 1939-1940

*"Belligerent Propaganda by Short Wave,"* Harold Graves, Princeton Listening Center.

*"The British Ministry of Information,"* Cedric Larson, Washington, D. C.

*"Propaganda and Nazi Techniques of Terrorism,"* Vernon McKenzie, University of Washington.

*"The Swedish Bureau of Information,"* Eric C. Bellquist, University of California at Berkeley.

*"Public Opinion and National Defense,"* Robert Horton, National Defense Advisory Commission, and Edward L. Bernays, New York City.

## \*(2) PROBLEMS OF PERSONNEL ADMINISTRATION (*Second Session*)

*Chairman:* Arthur S. Flemming, United States Civil Service Commission

*Secretary:* J. Donald Kingsley, Antioch College

*General Topic:* The Contribution that Colleges and Universities Can  
Make in Meeting the Personnel Needs of Federal, State, and  
Local Governments in an Emergency Period

G. Lyle Belsley, Executive Office of the President; James C. O'Brien, National Roster of Scientific and Specialized Personnel; Henry F. Hubbard, Federal Council of Personnel Administration, Director of Survey of Personnel Resources of State and Local Government; Katherine Frederick, National Defense Advisory Commission; Winston Stevens, United States Civil Service Commission; Samuel May, University of California.

**\*(3) ADMINISTRATION UNDER AMERICAN FEDERALISM (*Second Session*)**

*Chairman:* Arthur W. Macmahon, Columbia University

*Secretary:* Nicholas P. Mitchell, Furman University

*General Topic:* Intergovernmental Relations in Defense  
—the Problem of Man Power

*"The Selective Service Act,"* Joseph P. Harris, Northwestern University.

*"Employment Security,"* Ewan Clague, Bureau of Employment Security, Social Security Board.

*"The Coördination of Training for Defense Industries,"* Lieutenant Colonel Frank J. McSherry, Labor Supply and Training Section, National Defense Advisory Commission.

*Discussion Leader:* Daniel L. Goldy, Illinois Division of Placement and Unemployment Compensation.

**†(4) TEACHING PROBLEMS IN POLITICAL SCIENCE (*Second Session*)**

Sponsored jointly by the American Political Science Association  
and the National Council for the Social Studies

*Chairman:* Howard White, Miami University

*Secretary:* Ralph E. Page, Bucknell University

*General Topic:* Methods of Citizenship Training

*"From Knowledge to Action,"* Howard E. Wilson, Graduate School of Education, Harvard University.

*"Making Citizenship Education Effective,"* George H. Watson, Southern Illinois Normal University.

*"Training for Non-College Citizens,"* Edwin H. Reeder, College of Education, University of Illinois.

*"National Foundation for Education in American Citizenship; Its Program,"* Samuel R. Harrell, Chairman, National Foundation for Education in Citizenship.

*"Learning by Doing,"* O. Garfield Jones, University of Toledo.

*"Using Local Community Resources,"* Jules Karlin, Chicago Teachers College.

**\*(5) THE PROBLEM OF THE PUBLIC DEBT (*Second Session*)**

*Chairman:* Simeon E. Leland, University of Chicago

*Secretary:* C. Herman Pritchett, University of Chicago

*General Topic:* Intergovernmental Loans as a Form of Fiscal Assistance

*"Position of State and Local Borrowing,"* Frederick L. Bird, Dun and Bradstreet.

*"Case in Favor of Loans by Central to Subordinate Governments,"* J. A. Maxwell, Clark University.

*"Pitfalls and Dangers of Such a Policy,"* A. M. Hillhouse, University of Cincinnati.

*"Impact of Proposal on Public and Private Finance,"* Clarence Heer, National Resources Planning Board and University of North Carolina.

*Discussion:* Royal Van de Woestyne, University of Chicago; I. M. Labowitz, Illinois Tax Commission.

**(6-b) NATIONAL UNITY AND NATIONAL DEFENSE**

*Chairman:* Walter H. C. Laves, University of Chicago

*Secretary:* James T. Watkins, IV, University of Chicago

*"Influences Working Against National Cohesion of Opinion"* (Foreign and Domestic).

*"Influences Working For National Cohesion of Opinion"* (Official and Unofficial).

*"Democracy, Civil Liberties, and the Limits to Organizing Consent in the Interest of National Defense."*

*"Symbols and Forms of Appeal For and Against Cohesion in American Opinion."*

*Discussion:* L. M. Birkhead, Friends of Democracy; Ralph D. Casey, University of Minnesota; Carl J. Friedrich, Harvard University; Harold D. Lasswell, Washington School of Psychiatry; Arthur Pope, Chairman of Committee on National Morale; Saul K. Padover, Department of the Interior; Leo C. Rosten, Division of Information, National Defense Commission.

**\*(7) LOCAL GOVERNMENT (Second Session)**

*Chairman:* Clyde F. Snider, University of Illinois

*Secretary:* James C. Charlesworth, Institute of Local and State Government, University of Pennsylvania

*General Topic:* Rural Local Government in Transition

*"State Centralization and Its Results,"* Kirk H. Porter, State University of Iowa.

*"Functional Consolidation,"* Frank M. Stewart, University of California at Los Angeles.

*"Newer County Functions,"* M. Harry Satterfield, Tennessee Valley Authority.

*"Executive Integration at the County Level,"* Pressly S. Sikes, Indiana University.

*"Trends in New England Town Government,"* Lawrence L. Pelletier, University of Maine.

*"The Future of Local Government in Rural America,"* Roger H. Wells, Bryn Mawr College.

**\*(8) PUBLIC REPORTING (Second Session)**

*Chairman:* James L. McCamy, United States Department of Agriculture

*Secretary:* Nathan Leites, University of Chicago

*General Topic:* Personnel

*"Techniques for Determining Emotional Factors,"* Herman C. Beyle, Syracuse University.

*"Personality Traits in Public Reporting,"* Bruce Lannes Smith, New York University.

*"Simplifying Personnel Forms,"* Rensis Likert, Program Surveys Division, United States Bureau of Agricultural Economics.

**(9) RELATION OF POLITICAL SCIENCE TO THE OTHER SOCIAL SCIENCES  
(Second Session)**

*Chairman:* Ernest S. Griffith, Library of Congress

*Secretary:* Gabriel A. Almond, Brooklyn College

*General Topic:* Contributions in Methodology and Content to Political Science from Other Social Sciences

The participants were of two groups: (1) representatives of the other disciplines that have dealt with political phenomena; (2) representatives of political science who have used concepts and methods of the other disciplines. In general, the problem of the survival of democracy served as a case study.

*"Economics,"* Fritz Ermarth.

*"History,"* Ralph J. Turner, Economic Historian, Social Security Board, and Sumnerfield Baldwin, III, Western Reserve University.

*"Sociology and Cultural Analysis,"* Caroline Ware, American University.

*"Psychology,"* Robert Waelder, Editor, *Imago*, and Angus M. Laird, University of Florida.

**\*(10) GOVERNMENTAL ASPECTS OF NATIONAL PLANNING**  
(*Second Session*)

*Chairman:* George B. Galloway, National Economic and Social Planning Association

*Secretary:* Frank P. Bourgin, Duluth State Teachers College

*General Topic:* The Architecture of Public Planning

*"Planning for Industrial Mobilization in War-Time,"* Harold J. Tobin, Dartmouth College. (Paper read by proxy.)

*"Regional Planning in the Tennessee Valley,"* Gordon Clapp, General Manager, Tennessee Valley Authority.

*"Proposed Changes in Governmental Planning Mechanisms,"* E. Johnston Coil, National Economic and Social Planning Association.

**\*(12) BUDGET ADMINISTRATION AND INTERRELATIONSHIPS** (*Second Session*)

*Chairman:* Herbert Emmerich, Public Administration Clearing House

*Secretary:* Horace Wilkie, Executive Office of the President

*General Topic:* Interrelationships between the Budget Agency and Personnel, Planning, Accounting, and Other Staff Agencies

*Discussion:* Paul Ager, Budget Director, Tennessee Valley Authority; M. P. Catherwood, Cornell University, and Chairman, New York State Planning Commission; David L. Robinson, Jr., Executive Director, Public Administration Service, Chicago; C. A. Harrell, City Manager of Schenectady; William A. Jump, Director of Finance and Budget Office, United States Department of Agriculture; Rowland A. Egger, Director of the Budget, Commonwealth of Virginia; Kenneth Dayton, Director of the Budget, New York City; R. A. Dayton, Superintendent of the Budget, North Carolina; William A. Sponsler, III, Assistant Budget Secretary, Commonwealth of Pennsylvania.

**\*(13) JUDICIAL ADMINISTRATION**

*Chairman:* Rodney L. Mott, Colgate University

*Secretary:* Wilbert L. Hindman, Colgate University

*General Topic:* Current Administrative Problems of Federal and State Courts

*"The Judicial Council of the State of New York: Its Objectives, Methods, and Accomplishments,"* Edson R. Sunderland, University of Michigan, and Leonard S. Saxe, Executive Secretary, Judicial Council of the State of New York.

*"The Administrative Office of the United States Courts,"* Henry P. Chandler, Administrative Office of the United States Courts.

*"The Judiciary Article of the New Model State Constitution,"* Rodney L. Mott, Colgate University.

**Monday, December 30, at 12:30 P.M.**

**\*SUBSCRIPTION LUNCHEON—JOINT SESSION**

American Political Science Association and American Society for Public Administration

*Presiding Officer:* T. V. Smith, University of Chicago

*Speaker:* Elbert D. Thomas, United States Senate, and First Vice-President of the American Political Science Association

*Subject:* One Hundred and Fifty Years of Civil Rights in the United States

**Monday, December 30, at 2:30 P.M.**

\*Inspection Trip to the Public Administration Clearing House located at 1313 East 60th Street and the University of Chicago.



At the annual business meeting, the Secretary-Treasurer reported the total membership of the society as 2,857. Of this number, 2,442 are regular members, 31 sustaining members, 44 life members, and 340 associate members. During the year, 597 new members were added, while there were 182 cancellations, making a net gain of 415, as compared with 352 in 1939, 140 in 1937, and 90 in 1936. A considerable part of this gain is represented by an increase in subscriptions to the AMERICAN POLITICAL SCIENCE REVIEW on the part of libraries. Efforts were made throughout the year to increase the circulation of the REVIEW among public and college libraries. A special circular to advertise the REVIEW among librarians was published; nevertheless a large number of college libraries are still without the REVIEW. Fifteen Chinese university libraries were given the REVIEW in the year 1940 without charge. The Secretary-Treasurer expressed the appreciation of the Executive Council for the loyal assistance of the members of the Association who promoted the increase in membership by their nominations of colleagues, students, editors, and public officials. Members were urged to lend their support to a continuation of the membership campaign for the year 1941. On the recommendation of Oliver P. Field, chairman of the Committee on Perpetual Members, the Secretary-Treasurer was instructed to negotiate for the termination of such institutional memberships.

The financial report of the Secretary-Treasurer indicated that the income for the year 1940 was \$14,596.32, as compared with \$12,915.27 in the year 1939. Expenditures were \$16,229.65, as compared with \$12,863.83 in 1939. The checking account of the Association in the First National Bank in Evanston, Illinois, was \$1,785.30 on December 16, 1940 (the day the books of the Association for 1940 were closed), as compared with \$3,418.63 in 1939. The trust fund account showed a balance of \$603.77, as compared with \$325.32 in 1939. The investments of the Association in the custody of the First National Bank amount to \$7,600, all in United States Treasury bonds. The comparative balance statement also showed office equipment valued at \$293.39 and paper stock for printing the REVIEW valued at \$584.91, while the estimated capitalization of old issues of the REVIEW on hand is \$8,000. The Association maintains a separate account for the Committee on Social Studies which was set up by a grant of \$2,300 received from the General Education Board. Out of this account, moneys are paid on the order of the chairman of the Committee on Social Studies. The balance in this account is \$1,336.92.

The Auditing Committee, composed of Walter F. Dodd and Harold F. Gosnell, reported that it had examined the accounts of the Secretary-Treasurer and had verified the audit prepared by Frank E. Kohler and Company, certified public accountants, and announced that it had found the statement of accounts as prepared by the Secretary-Treasurer to be cor-

rect. The Committee commended the change in the classification of budget items and in the comparative balance statement adopted by the Secretary-Treasurer upon the recommendation of Harvey Walker. It advised that the Association refrain from incurring obligations beyond its assured income and urged the promotion of a permanent endowment fund for the financing of research and publication of research studies. It also recommended that the Secretary-Treasurer invest the surplus in the Trust Fund account in United States Treasury bonds. Furthermore, the Committee urged members of the Association to coöperate in placing memberships on a calendar-year basis.

The Executive Council adopted a budget for 1941 based upon an estimated revenue of \$15,847 and providing for expenditures of \$15,830. This budget includes an appropriation of \$9,235 for the publication of the REVIEW and \$6,595 for expenditures of the office of the Secretary-Treasurer. It was voted to apply the interest received from United States Treasury bonds of the par value of \$4,800 owned by the Association during the year 1941 to the maintenance of the Personnel Service.

The following resolution in memory of Benjamin F. Shambaugh, a former president of the Association, prepared by Kenneth P. Vinsel, was adopted by a rising vote: "It is with great sorrow that the American Political Science Association records the death of an esteemed member and former president. One of the founders of the AMERICAN POLITICAL SCIENCE REVIEW and for many years serving on its editorial board, Professor Shambaugh will always rank high in the history of the Association. He was an active teacher of political science from 1895 until his death on April 7, 1940. Few teachers have had as much influence as he on students as well as on all who came in contact with him. He was not only a teacher of political science but a maker of political science teachers. It was a rare privilege to be one of his 'boys' and to receive the benefits of his enthusiasm, interest, friendliness, and culture. For many years Professor Shambaugh was superintendent of the State Historical Society of Iowa and editor of its publications. He was one of the founders of the Mississippi Valley Historical Association. In this Association he served for a time as editor of the *Proceedings* and later as editor of the *Mississippi Valley Historical Review*. The death of Professor Shambaugh is an inestimable loss to the University of Iowa, to the state of Iowa, and to the nation. At the university where he taught for forty-five years, he came in contact with thousands of students who knew him as a friend and counselor. He was a familiar figure on the campus and throughout the state and was always alive to the possibilities of advancing the culture of the community. The American Political Science Association desires to express its keen sense of personal loss through the death of Professor Shambaugh."

The following resolution, in memory of the Marquess of Lothian, pre-

pared by Robert C. Brooks, was adopted by a rising vote: "Resolved that the American Political Science Association expresses its personal sorrow because of the passing of its member, the Honourable Marquess of Lothian. The Association takes note of the great public loss in the removal during these troubled times of a statesman so preëminently qualified not only to interpret Great Britain to the United States but also to interpret the United States to Great Britain."

The report of Frederic A. Ogg, Managing Editor of the *REVIEW*, showed a total of 1,264 pages of text published in the year 1940, as compared with 1,153 in 1939 and 1,219 in 1938. The number of copies printed is now 3,200. Of the 1,264 pages published in 1940, 244 were devoted to leading articles. The departments were represented by the following numbers of pages: American government and politics, 149; constitutional law, 54; public administration, 21; municipal affairs, 6; rural local government, 22; foreign governments and politics, 49; international affairs, 76; instruction and research, 17; news and notes, 69; book reviews and notices, 325; and recent publications of political interest, 175. The list of doctoral dissertations published in the August issue covered 17 pages and the volume index in the December issue, 21 pages. The Editor reported that the Consolidated Index of the *REVIEW* would probably be ready within two years. This Index would cover all issues of the *REVIEW*, including the General Index published in 1927, which covered Volumes I-XX (1906-26). The publication of bibliographies of books, periodicals, and government publications in the *REVIEW* was discussed in both the Executive Council and the Business Meeting, and the opinion was expressed that this service was so valuable that the space devoted to it in the *REVIEW* should not be curtailed. The Managing Editor requested members of the Association to send him suggestions for improvements in the *REVIEW*. The following persons were elected as new members of the Board of Editors: W. Brooke Graves (Temple University), Roscoe C. Martin (University of Alabama), Clyde F. Snider (University of Illinois), and Benjamin F. Wright (Harvard University).

Frederic A. Ogg, one of the two delegates of the Association in the American Council of Learned Societies, reported upon the undertakings of the Council during the past year. Copies of the "Summary of Activities in 1940" issued by the American Council of Learned Societies can be obtained by any member of this Association on request directed to the Secretary-Treasurer. Charles E. Merriam, senior representative of the American Political Science Association in the Social Science Research Council, reported on the activities of this Council in the year 1940. Attention was called to the "Program of the Social Science Research Council's Committee on Public Administration," published in the *REVIEW* in December, 1940. The Association instructed its representatives to request

the Social Science Research Council to give wider circulation to its annual report.

On recommendation of William Anderson, chairman of the Committee on Endowment, the Association voted to revise the by-laws of the Association as adopted last year to read as follows: "(1) That the American Political Science Association authorizes the establishment of a Permanent Endowment Fund, to be invested and preserved intact as to principal, except as any donor may otherwise stipulate, the proceeds thereof to be used from year to year for the purposes of expanding and improving the work of the Association; (2) That the President of the Association be authorized to appoint an Endowment Committee to solicit gifts and bequests to the Permanent Endowment Fund; (3) That the Executive Council be authorized to appoint by a majority vote of all the members of the Council (taken by mail if necessary) a Trust Committee, and be authorized to fill vacancies therein by similar vote, such Committee to consist of the President, Secretary-Treasurer, and five other members of the Association, the latter for terms of five years, with overlapping terms, so that after the first year one member shall be appointed each year; (4) That the Trust Committee be authorized: (a) to receive gifts and bequests to the Permanent Endowment Fund, provided that where special conditions as to the use of funds are attached to any gift or bequest, the Executive Council must also give its approval to the acceptance; (b) to make arrangements with a legally incorporated bank or trust company for the investment, custody, and safekeeping of the endowment funds; and (c) to appropriate from the annual income of the Fund (or from the principal, if so provided by the donor) for any of the purposes for which endowments have been established; and (5) That the Trust Committee shall present annually to the Executive Council and to the Association a statement of all endowment funds received and in its possession, of all funds expended by the Committee during the preceding fiscal year, and of all proposed expenditures from such fund for the succeeding fiscal year. The accounts of the Committee shall be subject to audit in the same manner as other accounts and funds of the Association."

Harvey Walker, chairman of the Committee on Regional and Functional Societies, presented a report surveying the relations of the national association with regional and functional societies. It was ordered that this Committee continue its work for another year and seek possibilities for the integration of the work of the regional societies with the national association, after discussion of the problem with regional organizations, and that it report to the Executive Council at its next meeting.

The Committee on Public Law, under the chairmanship of Oliver P. Field, was instructed to continue its study of the place of public law in the present curriculum with respect to teaching and research, and to report to

the Executive Council. Reports of the committees on grants-in-aid of publication by the American Council of Learned Societies were given by Ernest S. Griffith and Harold F. Gosnell. In 1940, the publication of one manuscript was recommended.

Joseph P. Harris submitted the report of the Committee on Relations with Public Officials, containing nine recommendations as follows: (1) that the Association set up a special committee to study and to make recommendations concerning the content of political science training; (2) that political science departments should follow a deliberate policy of rendering public service to governments within their areas, and conducting research studies of significant local governmental problems; (3) that political science departments should promote and encourage research studies involving field work, particularly comparative studies covering a number of governmental units with regard to a particular activity or problem; (4) that in making new appointments, political science departments should give consideration not only to the scholarship and teaching qualifications of candidates under consideration, but also to their interest and aptitude for contacts with government officials; (5) that in making promotions political science departments should take into account the research and public service activities of members of their staffs; (6) that political science departments should seek in various ways to establish effective and co-operative relations with public officials; (7) that the most effective use of political scientists, as well as of other social scientists, requires a research organization constantly securing information about governmental problems and research needs, and matching these needs with university resources; (8) that political scientists should make it a point to secure civil service status whenever there is an appropriate register, since frequently their services are not sought because the funds available are limited to persons who can be appointed through civil service; (9) that political science departments could with profit establish closer relations with other departments in the university or college. This report will be published in a forthcoming issue of the *REVIEW*. It was ordered that the President appoint a committee of five to inquire extensively into, and to report upon, the content of political science training.

Reports by Harvey Walker, chairman of the Committee on the Personnel Service, and by Martin L. Faust, chairman of the Committee on Publication of a Membership List, evoked considerable discussion. The recommendations of the Committee on the Personnel Service were as follows: (1) that the Personnel Service be continued; (2) that a charge of \$2.00 be made to associate members of the Association for listing in the Personnel Service, effective with the 1941 edition, and that no non-members be listed; (3) that a revised form of questionnaire be issued; (4) that the data on candidates published in the 1941 edition show, in addition to

what has been shown heretofore, the religious affiliation of each candidate who furnishes this information, the address of any free placement service where his complete credentials, including a photograph, may be secured, and his civil service status, if any; (5) that only those persons who are political scientists be included, and then only if they have not appeared in more than two previous lists; (6) that only those persons who either have received the Ph.D. or will receive it by August of the current year be included; (7) that data on those who have had teaching experience be bound separately from that relating to persons without such experience (or only a short period as a graduate assistant); (8) that the office of the Secretary-Treasurer commence as soon as practicable to collect data on all members of the profession looking toward the eventual publication of a membership list or "Who's Who" in political science; (9) that this Committee be continued in order to assist the Secretary-Treasurer in making its recommendations effective, to assist in the preparation of a revised mailing list for the Personnel Service, and to conduct such further study of the Service during 1941 as may seem appropriate.

The recommendations of this Committee were accepted with the modification that no charge be made for the first listing in the Personnel Service, that a charge of \$2.00 be made for a second listing, that no registrant be listed more than two years in succession, and that, if the finances of the Association warrant, a Who's Who of the American Political Science Association be published in the following year.

Earl De Long, chairman of the Committee on Personnel Recruitment in Political Science, reported that this committee had undertaken to study the question of whether the experience of public personnel administration has anything to contribute to the recruitment of the staffs of the political science departments in colleges and universities.

The report of the Committee on Publication of the Proceedings of the Annual Meeting, under the chairmanship of W. Brooke Graves, enumerated the advantages to be expected from the publication of such a record. The Managing Editor indicated that this publication would release about eighty pages annually from the already overcrowded REVIEW. It was ordered that a ballot of the membership of the Association be taken regarding the desirability of publishing the proceedings of the annual meeting of 1941 at a price of \$2.00 per copy, and that the Committee be continued as now constituted.

Frederick M. Davenport, chairman of the Committee on the Civil Service, offered a report which will be printed in an early issue of the REVIEW. Phillips Bradley, chairman, offered the report of the Committee on Social Studies, which was concerned with four major projects, as follows: (1) the integration and teaching of the social studies; (2) a project in cooperative development of effective teaching materials in the social

studies; (3) an inquiry into the status of the social studies; and (4) the use of the community as a classroom laboratory in education for citizenship. This committee received a grant-in-aid from the General Education Board amounting to \$2,300, and half of this money has been spent in prosecuting the above-mentioned projects. The committee has coöperated with the National Council for the Social Studies. The Executive Council ordered that the committee be continued for another year.

A report from W. Brooke Graves, chairman of the Committee on Program for 1940, explained the technique of the committee in formulating the program for the current annual meeting, the rule limiting speakers to one appearance on the program, the provisions regarding round tables and sectional meetings, and the integration of the program of the Association with that of the American Society for Public Administration. The report of the Program Committee, for the first time, contained a mimeographed alphabetical list of participants in the program. Agreement was found in favor of a joint annual meeting and a joint annual program with the American Society for Public Administration. The action of the officers in accepting paid advertisements in the Joint Annual Program and in renting exhibit space at the annual meeting was approved, and the officers were authorized to continue this practice in the future. The Executive Council instructed the officers to accept for the annual meeting of 1940 the offer to rent exhibit space on the part of national organizations engaged in promoting the adoption of national policies, such as the Committee to Defend America by Aiding the Allies.

The report of the Committee on Electoral Procedure in the American Political Science Association, under the chairmanship of Francis W. Coker, led to the following action by the Executive Council: (1) The Committee on Nomination of Officers for 1942 was authorized to follow the procedure of the committee for 1941 in canvassing the members of the Association for suggestions for nominations. (2) The committee for 1942 was authorized to publish its list of nominations in the October issue of the *REVIEW*. (3) The following amendment to the first paragraph of Article IV of the Constitution was submitted to the Annual Business Meeting, namely: "That the Secretary and Treasurer be elected by the Executive Council." (4) Another amendment to the second paragraph of Article IV was submitted which read: "Nominations may be offered from the floor at the Annual Business Meeting." (5) The President was instructed to appoint a Committee on Revision of the Constitution, while the Committee on Electoral Procedure was ordered to be continued. The Business Meeting adopted the two amendments proposed by the Executive Council. In favor of the first amendment, it was held that this change would bring the procedure of this Association into line with that of other learned societies which consider the Secretary and Treasurer as the executive officer of the

Council. The second amendment was urged as an application of the principle of democratic control.

On motion of Robert R. Wilson, the Association passed the following resolution: "Resolved that the American Political Science Association express (1) continuing interest in the enlarged publications program of the United States Department of State, (2) appreciation of the careful preparation of volumes appearing in *Foreign Relations* and endorsement of any effort which may be made toward bringing this set more nearly up to date, (3) the hope that the volumes of the Hackworth *Digest of International Law*, the complete record of the Paris Peace Conference, and the revised *List of Treaties in Force* may soon be made available, (4) approval of making the useful *Bulletin of the Department of State* an even more inclusive record of significant materials relating to American foreign policy; and Resolved that copies of this resolution be sent to the Secretary of State, the Director of the Bureau of the Budget, and the Chairman of the Committee on Appropriations in each House of Congress."

The Association adopted the following resolution: "Whereas, the study of democratic processes in the United States has been handicapped by the absence of an authoritative, adequately inclusive, and regularly published compilation of election statistics; and Whereas, such a compilation would be of genuine and wide public utility, not only conducing to academic analysis but also serving the needs of journalism and of political leadership; and Whereas, the task of issuing such a compilation can be performed only by the national government, presumably through the United States Bureau of the Census; and Whereas, the preparation and annual publication of such a compilation lies directly within the logic of the growth of the work of the Bureau of the Census; Therefore, Be It Resolved, that the American Political Science Association urges that the Bureau of the Census be authorized and equipped to undertake the annual publication of a suitable compilation of election statistics; and that the President of the Association be empowered and directed to appoint a committee which will advance this recommendation by all proper means and which, alone or in conjunction with the representatives of other associations, will consult with any official body that in the future may be charged with the preparation of such a compilation regarding its scope and arrangement."

The question as to the place of holding the annual meeting in 1941 provoked a lively discussion, the favored cities being Louisville, New York, and Washington, D. C. It was finally resolved to leave the decision to the officers of the Association after consultation with the officers of the American Society for Public Administration, providing, however, that this decision be ratified by mail ballot of the Executive Council.



Resolutions favoring the democratic system of government were approved by the Business Meeting and referred to the Executive Council.

The following officers were elected for the year 1941: president, Fred-eric A. Ogg (University of Wisconsin); first vice-president, T. V. Smith (University of Chicago); second vice-president, Arthur W. Macmahon (Columbia University); third vice-president, Frank M. Stewart (University of California at Los Angeles); and secretary-treasurer, Kenneth Colegrove (Northwestern University), together with five new members of the Executive Council as follows: Phillips Bradley (Queens College), Harold F. Gosnell (University of Chicago), E. Pendleton Herring (Harvard University), Charles M. Kneier (University of Illinois), and Donald C. Stone (Bureau of the Budget of the United States).

The reports offered by the chairmen of various committees contain considerable information of interest to political scientists. Mimeographed copies were distributed at the Business Meeting, but a number of copies remain in the office of the Secretary-Treasurer. As long as these are available, they will be mailed to members of the Association upon request.—KENNETH COLEGROVE, *Secretary-Treasurer*.

## BOOK REVIEWS AND NOTICES

*The President: Office and Powers: History and Analysis of Practice and Opinion.* BY EDWARD S. CORWIN (New York: New York University Press. 1940. Pp. xii, 476. \$5.00.)

*Presidential Leadership: The Political Relations of Congress and the Chief Executive.* BY PENDLETON HERRING. (New York: Farrar and Rinehart, Inc. 1940. Pp. xiv, 173. \$1.00.)

It is not without significance that the year 1940 has witnessed the publication by three keen observers of volumes on the American presidency. That by Laski has already been reviewed in these pages. The two volumes here considered are in a sense incommensurable. Herring's is a study in politics, Corwin's a study in public law. Herring presents what, in this reviewer's mental history, may best be described as a brilliant reconsideration, after thirty-two years of further experience, of the theme of Chapter III of Woodrow Wilson's *Constitutional Government in the United States*. Corwin, on the other hand, presents the most comprehensive treatment yet given of the constitutional law of the presidency.

If this judgment is in any wise correct, the implication is clear that both books must be read by the student of American government, and Corwin's also by the student of American constitutional law or constitutional history. Accordingly, the reviewer refrains from offering predigestion of such wholesome food. He agrees with Herring in accepting presidential leadership as a fact and rejecting it as a panacea. Yet in dealing with a subject that involves subtle political relationships, what matters, within a broad framework of common agreement, is one's emphasis; and the reviewer is not sure he agrees with Herring's emphasis. "In the world as we find it," Herring observes, "there is much to be said for a separation of powers which offers alternatives to a society uncertain of its direction but preferring to make its own mistakes rather than relinquish this privilege to any single gang of rulers." As a general statement, this strikes a responsive chord in every democrat. Herring also says: "Certain conditions clearly call for great power and initiative on the part of the president. Were his formal powers permanently increased to meet more easily the demands in times of crisis, would the nation rest content with such a concentration of authority in times of quietude? The answer may be made that the federal government has been committed to burdens of administration that call for positive leadership. There can be no doubt that the presidential office offers the only point for unified leadership. On the other hand, the whole concept of leadership in such terms is still tentative. . . . Leadership is the obverse side of 'followship' and fellowship." Again: "The presidents who come into office determined to put through a definite party program sooner or later discover their limitations. Those who act rather as symbols of national unity and as moderators of group interests main-

tain their power longer." This suggests to the reviewer a dualism of presidential function. Shall the president be more symbol and moderator or more spokesman for the masses against special interests that are adequately represented in Congress? This precise issue faced Franklin D. Roosevelt in 1936. The many voices that have condemned his choice do not come from the underprivileged.

Corwin's book has 316 pages of text and 113 pages of notes at the end. Needless to say, it is enriched with the historical learning of its author. Corwin is characteristically more interested in institutional results than in the "rule of the case," and emphasizes throughout that our constitutional law "often bristles with alternatives" and hence raises questions of high policy. His acute analyses of specific problems of constitutional power are so numerous that they must be left for the reader to explore for himself. While pointing out that the Constitution presents invitations to conflict, he leaves his reader with the somewhat uneasy impression of the vagueness of the limits of the president's *legal* power, and of the opportunity the president has of himself determining, in no small degree, what those limits shall be, especially in time of emergency. Fortunately, there is reassurance in Herring's exposition of the potential *political* checks upon the chief executive.

The two works present a striking similarity in some of their conclusions. Herring tells us that "the intensely personal nature of the office must never be overlooked." Corwin concludes that "presidential power is dangerously *personalized*" in the dual sense that presidential leadership depends upon "the accident of personality" and that "there is no governmental body that can be relied upon to give the President independent advice and whom he is nevertheless bound to consult." So he proposes "a new type of cabinet," constructed "from such leading members of Congress as he may choose," or with its "central core" composed of these congressional leaders and "those heads of departments whose activities are of general and constant political significance." Herring, likewise, ends a chapter on "Proposals for Change" with the observation that "the very existence of these proposals and experiments is at the least indicative of widespread opinion that further implementation is desirable if our system is to function," and the hint that "the president's custom of consulting with legislators might in time create an informal ministry composed of party leaders in Congress and in the administration."

JAMES HART.

*University of Virginia.*

*The President-Makers.* BY MATTHEW JOSEPHSON. (New York: Harcourt, Brace and Company. 1940. Pp. viii, 584. \$3.75.)

The dynamic author of *The Robber Barons* and *The Politicos* projects his studies in American political and economic leadership from 1896 to

1920. The period is one of tremendous importance in American life. It witnessed the popular challenge to plutocratic dictation of public policy. At the beginning and the end of the quarter-century, the banking interests were firmly in the saddle, even though twice during the intervening years they had suffered substantial electoral rebuffs.

Mr. Josephson's technique is to present graphic essays upon the outstanding leaders of the period, upon their political ideas, their backers, and their strategy of making themselves available for the presidential office. More attention is given to the "elder and lesser Roosevelt," as a leading publicist characterized the dynamic "T. R.;" but that is only natural, for he, in a very real sense, dominates the entire period. Moreover, his public utterances and writings challenge the serious analyst of political theory. "Teddy" was scarcely a "straddler," but he jumped from one side of the fence to the other with an alacrity that amazed those who thought they had him safely tied to a particular political program.

The author presents an interesting evaluation of the Oyster Bay politician. The elder Lodge and the two Adamsses, Brooks and Henry, are given great credit in that most amazing tutelage of the "mauve decade." Though known to our historians as a great liberal, Roosevelt was essentially an aristocrat and a conservative. If you scratched him, you discovered a Hamiltonian reliance upon property as against human rights. In 1904, he discovered that the people reacted favorably to reform, and he was always the sounding board of the popular clamor. He loved crowds. But even in 1912, when he ostensibly challenged the leadership of the Wall Street crowd, "T. R." listened obediently to the advice of George Perkins, of the Morgan financial empire, and Frank Munsey, the millionaire publisher.

McKinley is pictured as a "nice" man who jumped through the hoop at the command of Wall Street's most prominent politico, Marcus A. Hanna. And the rising young Beveridge receives recognition for the brilliancy of his brief flash across the skies of political greatness, though he, like "T. R.," was wont to substitute slogans and epigrams on the higher ethics for more fundamental thinking upon the really vital question of who was to govern America. The author understands LaFollette and what he courageously sought to do, and he also appreciates the services of Louis D. Brandeis; but neither of these is given the space which he so richly deserves in the great saga of an American political system that never materialized.

The second most important spot goes to Woodrow Wilson, emerging as a Wall Street hopeful, changing to the rôle of the "people's hired man" as governor of New Jersey, turning his back upon those who tutored him earlier and embracing essentially the program of Bryanism to win the presidential nomination, uniting the country's liberal forces for incom-

parable successes in one brief biennium, and ending as a lonely philosopher-king, who refused to emerge from his ivory tower to meet his countrymen upon the common level of forthright discussion.

*The President-Makers* is a truly graphic study of a spectacular period in American politics.

CORTEZ A. M. EWING.

*University of Oklahoma.*

*The Middle Classes in American Politics.* BY ARTHUR N. HOLCOMBE.  
(Cambridge: Harvard University Press. 1940. Pp. vi, 304. \$2.50.)

One has grown accustomed to receive stimulation from Professor Holcombe. He brings to bear upon our political problems something in addition to the thoroughness and detachment of a scholar. He has a way of discovering factors which have escaped men of less realistic perspective and less penetrating vision. Yet his originality does not rest upon any desire to reinterpret facts in the light of any erratic philosophy or to produce novel and startling effects. This book not only gives evidence of mature thought, but also it reassures those who doubt the solidity of American institutions. It falls into two parts. The first consists of a sixty-page essay, "In Defense of the American Way," which, though mainly concerned with a special theme, serves also as an introduction to what follows. The second part—most of which has already appeared in print elsewhere—includes four chapters; they deal with the economic basis of national politics, the influence of the middle classes in national politics, the future of democracy in America, and the political interpretation of history. This is not a collection of disconnected essays. One argument, in its various phases, is always being developed: that the soundness of our political system depends upon the preponderance of the middle class.

Particularly interesting in the historical survey is the long chapter on the influence of the middle classes, a revised version of the Bacon Lectures of 1940. Professor Holcombe refuses to accept the belief of communists and fascists that people fall into two clearly defined classes, the bifurcation being economic in the one case and psychological in the other; and, by a review of American class divisions during the last century and a half, he amply justifies his scepticism. First of all, he analyzes the personnel and proceedings of the Philadelphia Convention. As the recorded votes show, middle-class opinions gradually won a position of dominance. The ratifying conventions show a similar development. In this period, Professor Holcombe encounters three, not just two, classes and finds a sense of social solidarity transcending conflicts between them. Indeed, he concludes that class divisions of any kind are less significant than communists and fascists assume. Later on, the agrarian strategy of Jefferson and Jackson, along with the rapid settlement of the West, gave the middle

class a position of definite ascendancy. "The reason is clear. The typical Westerner throughout the period of predominant Western influence in national politics was a farmer, and the typical Western farmer was a middle-class farmer." The nineteenth century, politically speaking, was the century of control by the rural middle class.

This situation was complicated, however, by the growth of industrialism and, consequently, of city life. An urban middle class first rendered agrarian control precarious, and now threatens to supplant it. How to define this class is not easy to determine. If income is to be the test, what shall be the lines of demarcation at the top and bottom? Here Professor Holcombe is baffled; for the decision, being arbitrary, might include eighty per cent of the population or only twenty. He takes refuge in what the individuals themselves think about their status. Investigation by a magazine, he finds, showed that nearly eighty per cent of the population now regard themselves as belonging to the middle class. Even so, the question is not what men think today, but what they may think fifty years from now under changed economic circumstances. Perhaps, in spite of what Professor Holcombe seems to imply, the Marxian position of Lewis Corey has not been invalidated. Corey believes that the middle class, deprived of opportunity for profitable investment, will join hands with the proletariat and seek security in collectivism.

The influence of the urban middle class has been consolidated by the strategic position of the populous doubtful states in presidential elections—of states like New York, Ohio, and Illinois. Party platforms must be responsive to the interests of that class. Its influence increases as that of the rural middle class declines. But if it is urban, it is, nevertheless, middle-class. Professor Holcombe believes that the predominance of the middle class (urban and rural), which has furnished so solid a foundation for our political system, will continue indefinitely.

EDWARD MCCHESENEY SAIT.

*Pomona College.*

*Urban Government.* Supplementary Report of the Urbanism Committee to the National Resources Committee. (Washington: Government Printing Office. 1939. Vol. I, pp. v, 303. \$0.50.)

This splendid monograph is devoted to five major topics: development of urban government; federal relations with urban governments; federal reporting of urban information; associations of cities and of municipal officials; and public safety. Albert Lepawsky contributed the review of the development of the American city. Of necessity, he resurveys older materials pertaining to growth, functions, finances, areas, and authorities, administrative techniques, and personnel problems of our urban life. In certain phases, as, for example, in regard to state administrative super-

vision, legislative control, home rule, urban legislative bodies and executives, there is little here which is new. On the other hand, he presents new statistical and financial material in the form of charts and tables. The analysis, although not unusual in interpretation, is sound and thorough.

Wylie Kilpatrick and staff were responsible for the investigation of federal relations with urban governments. Increase of nationally performed services from 1850 to 1937 has been marked, and the various types of federal-city relationships that have consequently evolved are described with emphasis on those of a direct type in effect since 1933. Impact of federal policies and appropriations upon local finance is apparent in the summaries of federal, state, and local expenditures in functional fields. Detailed reference contingent to administrative problems is followed by recommendation for their solution. This appraisal of federal-city relations is the longest section in the volume; it is comprehensive and thoughtful.

The brief section on federal reporting of urban information was prepared by the Urbanism Committee itself, which noted trends in general and special urban statistics. Although urban reporting by both the regularly established and the emergency federal agencies is reviewed, the importance of this section lies in its recommendations for a more adequate and coördinated system of reporting of urban information.

Perhaps the most original segment of this volume, that dealing with associations of cities and of municipal officials, was contributed by Harold D. Smith, former executive director of the Michigan Municipal League. Herein appears an inclusive review of the growth, organization, and present-day activities of state municipal leagues. How prominent a part these leagues have come to play in inter-municipal and state-local relations now begins to appear. In their legislative programs, consultant activities, coöperative research, in-service training, purchasing, personnel, and other enterprises, the strong leagues have forged ahead. The rôles played by the American Municipal Association and the United States Conference of Mayors are particularly mentioned. Here again the federal-municipal factor looms large. Detailed statistics supplement general statements of fact concerning national, regional, and state associations of municipal officials, their composition, services, and sources of support.

Louis Wirth and Marshall Clinard were the authors of the final chapter of the monograph—that devoted to the subject of public safety. This topic is first considered in the light of rural-urban differences in crime and the distribution of urban crime. The authors' views on these subjects are supported by a series of tables computed from accredited statistical sources of urban and rural crime rates. Instrumentalities of crime control in urban and rural areas are outlined, together with interstate and federal policies in this connection. Although treatment of fire control is cur-

sory, police forces are discussed as to personnel, equipment, techniques, and cost. For the over-all view of old and new materials in the never static science of municipal government and administration, the composite authorship here at work has produced a document of five-fold interest.

ARTHUR W. BROMAGE.

*University of Michigan.*

*Industrial Disputes and Federal Legislation.* BY THOMAS RUSSELL FISHER.  
(New York: Columbia University Press. 1940. Pp. 370. \$4.75.)

Although the author states that he deals primarily with federal legislation affecting disputes in the railroad, coal, steel, and automobile industries for the period 1900-1939, only three of the eleven chapters, covering 95 of the 356 pages of text, are given to exclusive discussion of these industries. Actually, the study surveys labor legislation from the Interstate Commerce Act of 1887 down to the Social Security Act of 1939. Furthermore, while the study does not attempt to formulate a social program, there runs through the text a definite philosophy which would seem to point not only to "a more equitable policy," one which would extend to industry the same protection that it grants to labor, but "at the same time to a more secure one for both the employer and employee," which "would be a nation-wide regulation of wages and working standards administered by an independent board" (p. 335).

The book is a sympathetic sketch of labor problems, labor disputes, and labor legislation. Obviously, a discussion of less than 400 pages that deals with such comprehensive subjects as "The Problem of Industrial Disputes in Modern Industrial Society," "Gains for Labor in American Industry Since 1900," "Legislative and Administrative Orders Affecting Labor Relations," "Legal Methods and Techniques Affecting Labor Disputes," "Methods of Preventing and Settling Labor Disputes," "The Rôle Played by the Government in Industrial Disputes," and "Contemporary and Future Need for Social Legislation" (in addition to the chapters dealing with the railroad, coal, and steel industries), leaves much unsaid in spite of an introductory statement to the effect that the study "is more or less exhaustive" from "the legislative and judicial point of view." The analysis of statutes and cases must necessarily be very brief. The discussion of the rôle played by the courts in the settlement of labor disputes and in the development of labor law is perhaps the least satisfactory. The pervasiveness of the judicial influence is not made clear—for instance, the effect of the doctrine that liberty of contract is a property right protected by the Constitution.

While the author generally approves our national labor legislation, particularly in respect to the railroads, he suggests three major deficiencies: (1) failure to make provision for health insurance, (2) need for a more



effective child labor law than is provided by the Fair Labor Standards Act of 1938, and (3) "our whole social security program is based upon the success of business" (p. 342), that is, a falling of the business barometer can disturb that program. Considerable attention is given to the National Labor Relations Act. The Act got off to a bad start. In the two years between its enactment in 1935 and the cases holding it constitutional in 1937, "lawyers for organized industry and independents advised industrialists to 'pay no attention to it. It is unconstitutional and will never be enforced'" (p. 338). Nevertheless, the National Labor Relations Board has had considerable success in settling cases by agreement of both parties to the dispute—55.5 per cent up to January, 1938; and the Act is by way of modifying the long-standing anti-union policies of American industry.

The book is a readable, reasonably documented, and informative outline of the field; it is a usable contribution to the subject. The author is to be commended for his industry and for his objectivity in dealing with problems which rather encourage a pronounced taking of sides.

RINEHART J. SWENSON.

*New York University.*

*The Pattern of Politics; The Folkways of a Democratic People.* BY JOHN T. SALTER. (New York: The Macmillan Company. 1940. Pp xiv, 246. \$2.25.)

The author of this book has done notable work in the study of American politics. He has explored every nook and cranny of the vast storehouse of politics, talked to hundreds of practicing politicians, discussed politics with men and women in every station of life, and thought seriously about what he has seen and heard. An ardent patriot, Salter loves every aspect of America. With deep fervor, he extols the virtues of his native land, and he describes the corrupt, congenial, and obtuse politicians with an unmistakable relish. In the chapter on "Ethics," he disapproves many practices which are common, and yet contrives to accord the perpetrators of misdeeds a grudging admiration. He regards "talk" as "one of the basic things" in our democracy; but, notwithstanding some keen reflections on the misuses of public discussion, he does not clearly indicate what is wrong with our talk. He does not differentiate between the politicians who succeed because of their verbosity and those who succeed because of their taciturnity.

The chapter which treats of the representative function is entitled "Of the People," and consistently therewith argues that our politicians, law-makers, and elected officers reflect accurately the merits and defects of the masses of the people. Others have said the same thing. It is a good hypothesis, but I should like to see more proof; and if the proof should be found to be adequate, I feel that we should be told where, when, and under what conditions the system breaks down.

Salter summarizes his observations, experiences, and reading in a literary way. Consequently, his analyses do not go beyond those of T. V. Smith, Walter Lippmann, and the editors of the *New Republic*. Of much greater value are the scientific studies of voting, opinion techniques, and techniques of group cohesion made by Merriam, Gosnell, Pollock, Martin, Beyle, Lasswell, Odegard, and others.

It would be unfair and unwise to apply scientific methods of criticism to a work that follows in the tradition of Machiavelli and Lincoln Steffens. However, a reviewer is entitled to record his dissent from the assertions: that we have no classes in America (pp. 3 and 117); that the "typical American attitude was to help those Finns"; that political leadership rests on action (p. 192); and that "when you have a man in this country, you have an individual and a free vote" (p. 8). On the other hand, one must agree that Salter's comments on many of the characteristics of the American people and their rulers appear to be supported by ample evidence.

It must be admitted that Professor Salter has a superb style. No journalist has ever penned a study of politics as smooth and effortless as this one. He skilfully employs simple words in sentences of varying length and in balanced paragraphs. His citations from the classics, the Bible, Machiavelli, Steffens, and other great names produce an agreeable effect; and his conversational tidbits and vignettes drawn from life in Oklahoma, Wisconsin, Philadelphia, and New York lend a flavor of verisimilitude to his work.

If this book receives the notice to which its literary merit entitles it, it will probably stimulate further inquiries into the real pattern of politics.

ROY V. PEEL.

*Indiana University.*

*Municipal Indebtedness; A Study of the Debt-to-Property Ratio.* BY LEROY A. SHATTUCK, JR. (Baltimore: The Johns Hopkins Press. 1940. Pp. 145. \$1.25.)

The most common method of limiting municipal indebtedness is to fix the legal maximum debt at a certain percentage of the assessed or taxable value of property. After examining the development of this debt limitation device, and giving more specific attention to its application in the state of New Jersey, the author concludes that the debt-to-property ratio is not entirely successful. Its failure has been due primarily to fluctuating valuations, the exclusion of "overlying" debt, and many exemptions from the primary limit. Failure to limit special assessment debt was especially disastrous. The solution proposed is "some sort of administrative control" by the state, combined with some "mechanical regulator" which might be a modified form of the debt-to-property ratio.

Several observations deserve special commendation. The author recognizes that changing sources of local revenues may require a new type of debt limit. He properly emphasizes the importance of overlying debt. Exclusion of certain types of indebtedness from the primary limit is cited as an important cause for the failure of the debt-to-property limit in New Jersey.

The monograph departs at length from its stated subject. However, the digressions are valuable. The chapter on early restrictions has interesting historical material. One chapter is devoted exclusively to a discussion of the need for long-term borrowing and the desirability of a pay-as-you-go policy for larger municipalities. The chapter dealing with the nature of municipal indebtedness develops the thesis that a constant debt, incurred and paid in differing ways, may require greatly varying amounts for annual debt service charges.

One criticism seems in order. The author might properly have discussed whether or not the debt-to-property ratio is an economically sound method of limiting municipal indebtedness. He described why it failed, but he did not deal with the fundamental value of the device.

The book seems fresh and is well written. Several new ideas are contributed. The author understood his problem. Footnotes reveal extensive legal research. Certainly the monograph is a valuable contribution in a field where too little literature exists.

CARL H. CHATTERS.

*Municipal Finance Officers Association.*

*Research Methods in Public Administration.* BY JOHN M. PRIFFNER. (New York: The Ronald Press Company. Pp. 447. \$4.50.)

This book is intended for first-year graduate students. It was prepared in response to a demand from sympathetic employers of graduates of the public service training program of the University of Southern California that the boys be sent to them better equipped to take their place in a research or procedures or management survey unit in a governmental agency or in a governmental research bureau. The boys knew the theory and principles of administration, but they did not know their way around in the details of research planning, dealing with department heads or political leaders, interviewing, the handling of data, the use of questionnaires, making organization or flow charts, writing reports. This book is supposed to be used in a course that deals with the mechanics of work in an agency dedicated to group research in administrative methods. I have it on high authority that the book serves its purpose in actual use at U.S.C. The book is based upon two extended field trips by the author, in the course of which he interviewed several hundred experienced researchers to whom he had submitted in advance an elaborate questionnaire; so

that the advice which he gives is not the expression of his personal idiosyncracies.

On the other hand, a book built up in this manner runs the same risks as the manuals on successful salesmanship. Take the matter of interviewing: some people get orders by crashing doors and overwhelming the prospect, others by subtle approaches. All you can tell a young man in a college class is to size up the prospect and use his judgment whether to give him the works. Those with aggressive temperaments will use the one method, the others another. In the book under review, Mr. Pfiffner devotes a chapter—short, as all of them have to be if one is to cover so wide a range of topics in 450 pages—to report-writing. He states in his preface that the material is not a substitute for such courses as accounting, statistics, and English composition. Two pages of this chapter are devoted to the topic, "Dictate or Write?" How the average college student can assess which of these methods suits him better, I do not know, since few college students will have had an opportunity to practice dictation enough to find out whether they can use it. In any event, the only possible way to find out is to write or dictate. Each of us has undoubtedly evolved for himself methods of note-taking which serve him best; one of my friends composes first drafts on sheets, especially prepared for him, about two feet square—so that he can carry substantial parts of his argument before his eye. Another successful writer friend takes notes on four-by-six cards with such care that final composition involves little more than weaving the cards together with transition sentences. Are these not matters of personal habit; and can habit be developed other than by doing?

In short, I find myself arguing, not with the competence of Mr. Pfiffner's book, but with its purpose. Frankly, I think the employers who have urged Mr. Pfiffner to teach this course on research methods are shirking their responsibility. The same problem arises in many types of professional education: shall the law student use his precious years in a scholarly environment learning how to file papers in the county clerk's office? The public administrators have worked out what seems to me a better system of teaching pratique: apprenticeship, practice in doing. Of course, the bureau heads must give some attention to the apprentices; and it would undoubtedly suit some of them better to avoid this task. On the other hand, some will doubtless prefer to have novices learn the practices in force in their office, instead of those outlined in a text-book. For the rest, if a student reaches a graduate course without the ability to organize a report in concise, clear English, there is something wrong with the English department, or else he should be set to writing reports.

CHARLES S. ASCHER.

*Social Science Research Council.*

*Governments of Continental Europe.* BY J. T. SHOTWELL, R. K. GOOCH, KARL LOEWENSTEIN, ARNOLD J. ZURCHER AND MICHAEL T. FLORINSKY. (New York: The Macmillan Company. 1940. Pp. xxix, 1092.)

This extremely useful book will be welcomed by a large audience. Every person of intelligence is deeply concerned with the facts and the meaning of government in Europe today. Here the facts are stated as clearly and concisely, and interpreted as impartially, as can possibly be expected. This does not mean that the authors carry impartiality to the point of imbecility, like the donkey between the two bundles of hay. If one government were as good as another, there would be no science of politics, and history would be a mere exercise in story-telling rather than a light upon the path. The authors not only describe and explain; they evaluate—and their touchstone of values is a free democratic society. "Democracy," says Professor Shotwell in his thoughtful introductory chapter "... is an embodiment of intelligence itself; for, even when its standards are relatively low, its method of trial and error is directed by those who are free to consider all the consequences of the decisions which they make."

Each study of contemporary government is preceded by an outline of the historical development which led to the present system. Although such an outline is indispensable, some of the authors are inclined to give it disproportionate space. Thus, in the treatment of France, 57 out of 231 pages, and in the treatment of Germany 124 out of 288 pages, are devoted to historical background. The bibliographies which follow the respective studies are well selected aids to further reading and to the building of reference libraries in the field of comparative government.

France is discussed by Gooch, Germany by Loewenstein, Italy by Zurcher, and Soviet Russia by Florinsky. There are brief treatments, also, of Belgium, Holland, Switzerland, and the Scandinavian countries. Unfortunately, it was not possible to include a treatment of France under Nazi rule; but Professor Gooch has done a remarkably thorough piece of work, within the limitations of space, upon the Third Republic.

The discussion of Fascist government in Italy is concluded by a "balance sheet," which shows gains "in a considerable degree of material progress, in an expanded national territory, and in greater national influence in world affairs," as well as losses in "tremendous outlays of capital and a mortgage upon the future. . . . The extraordinary emphasis upon militarism and national preparedness may make a military machine out of Italy, but hardly a nation whose principal aim is the prosperity and welfare of the citizens."

In the treatment of Russia, the structure and machinery of the Soviet government are dismissed in a single chapter of twenty-five pages, in

order to make room for chapters on "Economic Planning" and "The State in Business." All this material is valuable, well selected, and well organized. A definite attempt to be fair to a system of which the author cannot approve is found in such remarks as the following: "The Soviet leaders have a certain formal justification for describing the U.S.S.R. as a democracy since the Constitution has introduced universal suffrage and the direct secret ballot. . . . [These], however, are merely the tools of democracy. . . . The essence of political democracy is the right to hold and express freely views that do not agree with those of the group in power."

The discussion of Hitler's Germany by Professor Loewenstein is able and interesting. Although the author cannot conceal his hatred for the present régime of terror and lawless force, he is aware of his feeling and guards against it where it might impair objective treatment of the facts. Thus: "When trying to describe and appraise a modern dictatorship, one has to be on guard against personal bias as well as against the ambiguity and obscurity of the textual material on which the conclusions are based. Political institutions may bear such familiar appellations as 'parliament,' 'plebiscite,' 'statute,' 'law,' 'judge'; but when applied by a dictatorship they are apt to impart connotations widely different from those customary in a democracy. . . . The evaluation of dictatorial politics . . . remains at best tentative and of approximate correctness only." The institutions of the Third Reich are described accurately, in a vigorous and interesting style. The importance of theory and doctrine is emphasized, especially since many of the institutions would be meaningless unless recognized as embodiments of "the racial myth" or some other accepted doctrine of National Socialism.

Throughout the studies of Italy, Russia, and Germany, less attention is paid to the machinery of government than to the economic and social objectives to attain which that machinery was set up. This is unavoidable; yet the wish persists that a little more discussion of institutions had been presented. On the other hand, there are nearly eleven hundred pages in this book, and every page is both interesting and valuable.

The volume will be welcomed as a textbook for advanced classes. It is hardly appropriate for beginners, because it assumes the reader's familiarity with typical organs of government, and the significance of changes in one organ or of the abolition of another. Those who possess such a background will read it with profit, and will return to it again and again for reference. Outside university walls, all who seriously wish to understand the type of state which is menacing Western civilization today—government of the masters, for the masters, by the masters—are advised to read this book.

MIRIAM E. OATMAN.

*The American University.*

*America's Last Chance.* BY ALBERT CARR. (New York: Thomas Y. Crowell Company. 1940. Pp. 328. \$2.75.)

*Where Do We Go From Here?* BY HAROLD J. LASKI. (New York: The Viking Press. 1940. Pp. 192. \$1.75.)

Mr. Carr's volume is based on the assumption that the present war is a total world war and that the United States must take an active and dominant part in it. The arguments designed to support that assumption are all so familiar to everyone acquainted with contemporary literature on the subject that they need not be even summarized here. Having made this assumption and declared his policy for the United States, Mr. Carr lays out the following program: create a central planning agency with full power of coercion; suppress all organizations "dangerous to representative democracy"; organize counter-propaganda; give the federal government more power in formulating national educational policies; stop thinking in terms of national defense and think in terms of attack on world Nazism; declare open war on Nazism; plan the defense of the entire hemisphere; develop in collaboration with Britain a system of world naval and air bases; extend the term of conscription to two years; strengthen Latin American armies; expand land, sea, and air power; make plans for expanding foreign trade by remonetizing gold; adopt a generous policy of making foreign loans; use our food and gold surplus to foment revolutionary opposition to Nazism throughout the world; give "fair play" to business, labor, and the farmer. America betrayed the world by not joining the League of Nations, and now America has another and "last chance" to save itself and the rest of the world by adopting Mr. Carr's expedients. It is possible, of course, that the United States will have similar chances in the future (if the past is any guide) and that this is not the last chance. It is possible also that the government of the United States, which seems about to embark on Mr. Carr's total war, will be surprised by the results of taking "the last chance."

Mr. Laski's volume has a decided bearing on this "chance." It is a clear-cut, factual analysis of fascism as a political and economic system and a sober study of the policy of appeasement under which the Tory party in Great Britain, through the government, sought to use Hitler against Soviet Russia by feeding his appetites and supporting the Franco rebels in Spain against the Republic. So much for the immediate past. Now, Mr. Laski asks: Where do the British stand today? And what are they to do next? These questions he answers. They are in a jam and cannot fight the war with old capitalist methods and Tory rhetoric. They can win the war only by provoking a revolution in Europe and making something like a revolution at home. This revolution means the socialization of "those vested interests which . . . stand in the way of our surrender

of the principle of state-sovereignty." It means a new Europe also based on such socialization. It means an international organization based on the socialization of economics and the pooling of material resources.

That vision of the future is quite different from Mr. Carr's vision, and millions of British people share it with Mr. Laski. Perhaps they, along with the government of the United States, will also be surprised at the consequence of the great fire now burning. For, to paraphrase an old saying, men may easily set the world on fire, but they are never able to calculate the long consequences of their action. As far as I can discover by much searching, there is nothing in political science which permits them to perform that feat; but this may be deemed irrelevant, if not irreverent.

CHARLES A. BEARD.

*New Milford, Conn.*

*Survey of British Commonwealth Affairs. Volume II: Problems of Economic Policy, 1918-1939, Part I.* By W. K. Hancock. (London: Royal Institute of International Affairs. New York: Oxford University Press. 1940. Pp. xi, 324. \$4.50.)

The author of this *Survey* has done far more than write a history of two decades of intra-imperial relations. He not only has arranged and sifted a truly formidable volume of factual material with scholarly meticulousness, but he also has placed his account in generous historical perspective and interpreted both with rare urbanity and detachment. Taken as a whole, the work constitutes a summing up of the achievements and faults of the British Empire, viewed through a mind deeply imbued with the great liberal tradition.

The first volume dealt largely with political and constitutional developments. The present one is concerned with "economic policies against the background of immediate economic fact" (p. 288). Fully half of the book is an interpretation of the period down to 1918; the remainder discusses in detail the subsequent economic relations between the autonomous communities of the Empire. The economic analysis of British policy with respect to the colonies has yet to be written.

Two ideas dominate this volume. The first is the idea of a moving frontier. The frontier theory, which has proved so illuminative of American economic development, is here applied to the economic development of the British Empire. The second idea is comprehended in the term "The Great Commercial Republic," which is the name given by Adam Smith to the system envisaged by his economic doctrine. "It showed," writes Professor Hancock, "a way by which empires in the future, unlike all empires of the past, could dissolve without disintegrating—by bringing themselves into a wider world order" (p. 50). Taken together, these two



ideas imply that when imperial economic expansion is no longer possible within the bounds of empire, the empire decays unless economic policy can free itself from political considerations. That this is the author's view is indicated by his conclusion that the first British Empire foundered because American economic expansion was hindered by mercantilist restrictions. There is, of course, nothing particularly new in all this. What is novel is its systematic and detailed application to the study of the British Empire.

Moreover, it is applied with precision, clarity, and a masterly sureness of touch. Post-war economic trends between the Dominions and Great Britain are analyzed. Through an exposition of population tendencies and land settlement schemes, the frontier of settlement is shown to have virtually disappeared. An analysis of capital movements and monetary policy reveals a restriction of the investors' frontier. The contraction of the frontier of trade is traced through changes in the volume and direction of foreign trade. The drive toward protection is discussed from its inception in nineteenth-century patriotism to its realization as imperial preference in the Ottawa Agreements; and the failure of the Ottawa policy to promote further expansion is made apparent.

Professor Hancock has probed well below the surface. But his methodological apparatus prevented him from exposing the vital parts. By placing them in their economic context, he has been able to show why past policies appeared plausible. He has, however, failed to explain why a given policy was adopted instead of possible alternatives. He has shown with insight how the Empire developed economically, but not why it developed the way it did. By his use of the frontier theory, he implies that for social health the possibility of continuous economic expansion must ever be present. Yet, because its use condemns him to deal with categories rather than causes, he is unable to reveal the necessary conditions which make such expansion possible.

A. B. HANDLER.

*Washington, D.C.*

*Cadiz to Cathay; The Story of the Long Struggle for a Waterway Across the American Isthmus.* BY MILES P. DUVAL, JR. (Palo Alto, Cal.: Stanford University Press. 1940. Pp. xix, 554. \$5.00.)

*The Fight for the Panama Route; The Story of the Spooner Act and the Hay-Herrán Treaty.* BY DWIGHT CARROLL MINER (New York: Columbia University Press. 1940. Pp. xv, 469.)

These volumes dealing with events in an area of prime importance in American foreign policy have special timeliness at present. The Caribbean and the Panama Canal now demand renewed attention because of their

relation to the developing problems of national defense. Both of the books are judicial in viewpoint and adequately documented. Both furnish abundant evidence that the extreme points of view common in discussions of canal diplomacy a generation ago are untenable and that there is much to regret in the record of the actions by both Colombian and United States authorities in the opening years of the century.

Materials easily available in printed form have now accumulated in such quantity and detail that the main outlines of events are no longer in doubt. The authors bring us, in addition, the evidence of the archives of the government departments as far as available, contemporary Colombian press comment less accessible to scholars, and the testimony of participants in the events discussed as it appears in their state papers, private correspondence, and interviews. Future students may discover changes in emphasis on certain details to be necessary if the private papers of Colombian and Panamanian leaders, those of William Nelson Cromwell and Philippe Bunau-Varilla, and the archives of the New Panama Canal Company become available for study. It seems unlikely that the major outlines of the story as we now know it will be greatly modified.

Dr. Miner's book is an intensive study of the events leading up to the Panama Revolution (especially in Colombia), of the steps taken by representatives of the Panama Canal Company and congressional leaders to secure adoption by the United States of the route finally chosen, and of the political pressures resulting in the negotiation and defeat of the Hay-Herrán treaty. Colombian public documents and newspapers are used to good advantage to show local opinion. A briefer treatment of the Panama revolution closes the volume.

The analysis of the political influences at the making of the Hay-Herrán treaty is the book's chief contribution. Colombian representatives were hampered by frequent breaks in telegraphic communications, the political jealousies inherited from the recent civil war, conflicts for executive control, and frequent cabinet changes. American policy suffered from disagreements in Congress over the route to be preferred and the uncertainties of an approaching election. Conditions on both sides favored the misunderstanding and arbitrary action.

The American leaders, the author shows, made a better showing than their earlier critics were willing to admit, a worse one than their friends maintained. Beaupré, the American representative at Bogota, comes in for sharp criticism. Hay stands in a less favorable light than do most of his contemporaries, especially in his espousal of the cause of the New Panama Canal Company under the influence of the astute William Nelson Cromwell.

Roosevelt fares badly. It is not pleasant to read the President's description of the representatives at Bogota as "animals" and "cat-rabbits,"

even if the phrases appear only in private correspondence. His impatience where calm judgment was essential, as shown both before and after the revolution in Panama, led him to actions which do not add to his record as a statesman.

On the other hand, there is no evidence that he or any other responsible government officer sponsored the Panama revolution; and whatever the scope of orders to the navy, the actions taken under them had precedent. Roosevelt, in his later "I took the Isthmus" speech, did himself injustice. The author's demonstration of the "tragic ineptitude" of the diplomacy of both Colombia and the United States in the "Panama affair" leaves the citizens of neither country ground for pride in their national foreign policy.

Commander DuVal's *Cadiz to Cathay* is not a popular discussion, as its title might indicate, but a scholarly review of the history of isthmian canal projects, especially the Panama route, a study of the diplomatic and congressional contests concerning the canal, and a history of the Panama revolution. It thus covers a larger field than Dr. Martin's volume. Its chief emphasis, however, is upon relations with Colombia, and the author's conclusions run parallel to those reached by Dr. Martin. The congressional history of canal developments is given special attention. The rôle of Senator Morgan in the development of canal policy is presented from congressional documents and his private papers more satisfactorily than by earlier writers. In discussing the ill-fated treaty with Colombia, Commander DuVal has used to excellent advantage the Herrán papers, which apparently were not available to Dr. Martin. Of special interest also is the discussion, drawn from official records, of the part played by the navy in the Panama revolution—a phase which has often been misinterpreted.

CHESTER LLOYD JONES.

*University of Wisconsin.*

*Publicity and Diplomacy; With Special Reference to England and Germany, 1890-1914.* BY ORON JAMES HALE. (New York: D. Appleton-Century Company. 1940. Pp. xi, 483. \$4.00.)

From the perspective of 1940, the epoch before Sarajevo looms dimly as a remote Golden Age when safety, honesty, and hope were the rule rather than the exception even among politicians and diplomats. But every present, however grim, has its seeds in its own past, however golden. The terrifying spectacle of today, therefore, ought never to discourage investigation of how the men of yesterday behaved and why. Professor Hale, of the department of history at Virginia, is no antiquarian seeking escape from the now into the then. On the contrary, his purpose is to see how the body politic first developed one of its characteristic modern fevers

in order that he may better diagnose its present mortal illness. With the aid of a Social Science Research Council fellowship and a later grant from the University of Virginia Institute for Research in the Social Sciences (never was money for scholarship better invested), he spent a year in England and Germany in the good old days of 1933 gathering data about the relationships between diplomats and newspaper men in the better and older days before the first installment of Armageddon. The result is a contribution to social and political analysis of rare penetration and incisiveness. The author's problem is that of describing the context within which Anglo-German relations were carried on in the period when most adults in both countries were for the first time both voters and readers, and when twentieth-century journalism, yellow and otherwise, had its birth.

To say that Professor Hale has done a splendid job would be an understatement. He writes with grace and erudition. He has an ear for detail, much of it fascinating, and an eye for the grand design. Best of all, he has what too many historians lack: a point of view and a set of clear concepts. He rejects the term "public opinion," implying rationality and consensus, in favor of "publicity," implying purposeful action on the part of *élites* of skill and influence to shape collective responses. "I have endeavored," he says in his preface, "to explore on a clinical level the triangular relationship between the public, the press, and the influential." He has succeeded admirably. In the period with which he deals, the press had not become the sharp weapon of diplomacy which Goebbels and his competitors have since made it. Yet diplomats were learning to use press-men for their purposes, and press-men were seeking to make capital out of diplomacy. *Weltpolitik* centered in Anglo-German relations, and these were more and more conducted in a climate of opinion engendered by the pushing and pulling of professional diplomats and professional journalists, as yet not *gleichgeschaltet*. This reviewer has nowhere encountered a more illuminating treatment of the German and British press in relation to foreign policy. Hale's method is that of the case study. His cases are well chosen and are searchingly dissected. His chapter on the English "spy-panic" and "invasion-scare" of 1908-10 is a masterpiece, too contemporary for comfort. One can regret only that the final chapter on 1914 is not quite up to the level of its predecessors, and that the author did not add a chapter of conclusions, generalized from his rich data. The conclusions are in his pages, however, and they will repay careful study by all interested in the arts of conducting foreign affairs in an age when the successful gain their ends not only by the Sword but by the Word.

FREDERICK L. SCHUMAN.

*Williams College.*

*The Bolsheviks and the World War; The Origin of the Third International.*

By OLGA HESS GANKIN AND H. H. FISHER. (Stanford University: Stanford University Press. 1940. Pp. xviii, 856. \$6.00.)

Volumes from the Hoover Library staff grow in size and bulk of detail; they offer materials more and more rare, with increasing weight of editorial comment. This latest contribution can rightly be called indispensable to students of world politics. It contains a vast store of documents, some made available for the first time in English. It represents something close to perfection in the technique developed over the years by Dr. Fisher. The editorial text supplements the documents with factual and bibliographical materials, so that the background is complete and the story continuous. A new departure, in the Russian series, is the 25-page chronology, covering the main events in the history of international socialism from 1848 to 1918. The bibliography is probably the most extensive ever offered on the subject in English; it includes descriptions of revolutionary journals of the time, in various languages, as well as books, memoirs, periodicals, etc. Of special service to students are the biographical notes concerning persons mentioned in the text or documents—socialists long since forgotten, statesmen, present leaders, and companions of Lenin who have in recent years been “liquidated” or by more normal methods removed from the scene. Finally, the detailed table of contents and the thoroughgoing index make quick reference easy.

It is clearly impossible to “review” such a volume of international records. A few excerpts may indicate the relevance of the materials. The authors begin their editorial notes (actually history) in the 1870’s; the first documents date from 1905, following the historic split between Bolsheviks and Mensheviks within the R.S.D.L.P. The anti-war documents can be studied with profit today. For instance, in his *Theses on the War*, written in Switzerland September 5 or 6, 1914, Lenin made his famous charge against socialists who had voted for the war budgets in their respective parliaments, that they were guilty of “direct betrayal of socialism.” He called for a “merciless struggle against chauvinism,” and for workers to turn their “weapons, not against brothers, hired slaves of other countries, but against the reaction of bourgeois governments. . . .” In demanding that socialists work to turn the imperialist war into class war, Lenin announced as a goal “the transformation of all separate states of Europe into a republican united states.” (!)

Of typical interest also is Bukharin’s pamphlet on *The Imperialist Pirate State*, in which one may read: “The most important question of tactics of our time is the question of so-called defense of the country. This word itself contains a deception, for it concerns not really the country as such, i.e., its population, but the state organization, the state. . . . The

state is a historical concept. This means that the state is not a permanent social law but a transitional social form . . . the state arises only at a certain stage of development and must vanish in another state. . . . With the abolition of class relationships the political expression of this relationship—the state—is abolished also, and a socialist society is formed without classes and without a state."

During the war years, the main purpose of the several international Socialist Conferences was, by means of resumption of class struggle on the part of workers, to force the ruling classes to conclude peace. The high mark of the various proclamations to workers of all countries was the Zimmerwald Manifesto, 1915, which shows the hand of Lenin. Following is an excerpt: "This struggle is also the struggle for liberty, for brotherhood of nations, for Socialism. The task is to take up this fight for peace—for a peace without annexations or war indemnities. Such a peace is possible only when every thought of violating the rights and liberties of nations is condemned. There must be no forced incorporation either of wholly or partly occupied countries. No annexations, either open or masked, no forced economic union, made still more intolerable by the suppression of political rights. The right of nations to select their own government must be the immovable fundamental principle of international relations."

Such excerpts, of which there are many of similar merit in the collection, make powerful reading now, when self-determination seems in eclipse, in a general twilight of the whole nation-states system. From another point of view, it should be possible for a student to work out from these documents the parallels and contrasts between what Lenin intended and what the Nazis are putting into operation.

Drs. Gankin and Fisher announce their next labor to be: *The Bolsheviks and World Revolution; The Founding of the Third International*. That will be awaited with keen interest. Scholarship of this kind, devoted to the preservation of original records, is of inestimable value, especially since totalitarian governments have adopted the practice of perverting history, partly by distortion, and partly by destruction of the original documents.

BRUCE HOPPER.

*Harvard University.*

*Fifty Years of War and Diplomacy in the Balkans; Pashich and the Union of Yugoslavs.* BY COUNT CARLO SFORZA. Translated by J. G. Clemenceau Clercq. (New York: Columbia University Press. 1940. Pp. x, 195. \$2.75.)

For many years the Balkans—a word of Greek, Slavonic, or Turkish origin meaning mountains and designating the easternmost of the three

southern peninsulas of the European continent—have been a favorite field for mental gymnastics to many an outside observer. An impatient author, having realized that a presentation of Balkan affairs could not be made to fit into familiar patterns, has been forced to declare that if Southeastern Europe could be sunk beneath the sea, the peace of the world would be assured. Another has coined the word "Balkanization," meaning perennial division and strife, as a term of universal reproach. A political scientist, pretending to be realistic and forgetting that the origin of almost every disturbance in the Balkans could be traced directly to the door of the foreign office or legation of some Great Power, has given a highly inaccurate and unrealistic description of the politics of that region in the light of internal "power politics."

Count Sforza's new book aspires to be only a sympathetic testimonial of the life of the great Yugoslav statesman, Nicholas Pashich. Our author thinks that Pashich, like Cavour, represents an epoch rather than an episode in the history of his own people. His genius and his strength succeeded in making use of the events in his time. He devoted his long life to the cause of emancipation and unification of his people, the Serbs, Croats, and Slovenes, into one unitary kingdom of Yugoslavia. It was not his fault that the attainment of this goal entailed the disintegration or mutilation of two neighboring empires, the Ottoman and the Austrian. Count Sforza has no sympathy for the aristocrats of Berlin, Budapest, or Vienna, who brought about the first World War by acting in accordance with the Kaiser's marginal note to Tschirsky's report: "Those fellows [the Yugoslavs] can still be cured by blood and iron."

In these brilliant pages, Count Sforza deals chiefly with the relations between the Italians and the Yugoslavs. The historic aftermath of 1848 offered the Italians an initial barrier to a complete Italo-Slavic understanding. The Italians long remembered that the Austrian Slavs had been the mainstay of Hapsburg oppression and that they had formed the most faithful Hapsburg garrisons in Milan and Venice. But the author, to his lasting credit, is not an adherent of Stephen Decatur's principle—"my country, right or wrong." He does not hesitate to state that the Italian practitioners of *Realpolitik* were at the opposite pole of reality, because "your true realist knows that idealistic motives form an essential part of reality" (p. 163). Finally, at Rapallo, in 1920, the author, as foreign minister of Italy, persuaded the Yugoslav government to give voluntary and cordially an acknowledgement of the fact that half a million Slavs had to become Italian, since they lived on the Italian side of the Alps.

There are some errors. The word *Konstitucija* must be *Konstitutsiya* (constitution). *Cheabo* must be *Shvabo* (Swabian), a nickname for "German." The name "Milanovich" must be "Milovanovich." Pashich, as

political exile in Bulgaria, enthusiastically approved the reunion of Bulgaria and "Eastern Rumelia" in September, 1885, and even asked the Bulgarian government to furnish him arms and munitions for a new rebellion in Serbia. In fact, he rendered a valuable service to the Bulgarian government during the Serbo-Bulgarian War (1885-86). These facts could easily be verified in the files of the London *Times* as well as in Bulgarian and Serbian official publications.

It is but fair to say that Count Sforza is a well-known anti-Fascist statesman and the only Italian nobleman, so far as can be ascertained, who appreciates the virtues as well as the vices of the peoples dwelling in Southeastern Europe. Like Mazzini, his illustrious countryman, Sforza believes in the feasibility of a union of Balkan States. He has made a valuable contribution to a realistic understanding of Balkan diplomacy.

THEODORE I. GESHKOFF.

*Columbia University.*

*This Second War of Independence.* BY WILLIAM S. SCHLAMM. (New York: E. P. Dutton and Company. 1940. Pp. 260. \$2.00.)

Somewhat more than one-half of this book is devoted to an examination of the democratic collapse in Continental Europe. It is the author's opinion that free Europe became Hitler's victim largely because public spirit had declined. This decline was reflected in the stupid opportunism of political leaders, in phlegmatic, routine-enslaved bureaucracies, and in the great number of "professional" intellectuals who preferred to toy with arid ideological nonsense instead of inculcating democratic loyalties. Above all, the decline of public spirit was manifested in the attitude of the masses who consistently preferred the social gains of a policy of pacifism, howsoever transitory these might be, to the sacrifices necessary for the preservation of national liberty. From this diagnosis of democratic Europe's fatal malady, the concluding chapters of the book attempt to derive profitable suggestions for America's own defense in the current crisis. These suggestions include startling, but by no means impracticable, proposals for combating "Trojan-horse" activities, for solidifying hemispheric political and economic unity, and for developing a more effective defensive strategy against the totalitarian threat from abroad.

Critics, although agreeing with Mr. Schlamm's principal thesis that the pacifism of the masses spelled the doom of the Continental democracies, may occasionally differ with him as to the causes of that pacifism. In identifying those causes, some will undoubtedly attach more importance than he has to the psychological effect of the misplaced popular faith in the efficacy of the post-Versailles juridical apparatus for safeguarding world peace. Such differences of opinion cannot, however, affect the solid



merit and the usefulness of Mr. Schlamm's book. To its production he has brought an intimate knowledge of European affairs, acquired during a distinguished journalistic career, and a mind refreshingly free from pedantry and ideological preconceptions. The result is a volume whose intellectual vigor and critical discernment place it well in the van of most of the recent obituaries on European democracy. It is, moreover, a work offering a challenge to action which America, as the chief surviving democracy, can hardly ignore. If there are still those who believe that free institutions are a miraculous manifestation of divine benevolence or a kind of automatic phenomenon of nature, they will do well to read what Mr. Schlamm has to say.

ARNOLD J. ZURCHER.

*New York University.*

*The Statecraft of Machiavelli.* BY H. BUTTERFIELD. (London: G. Bell and Sons Ltd. 1940. Pp. 167. 6s.)

This volume is a tight little book from the tight little island; it should take its place among the important contemporary interpretations of Machiavelli. While it argues a case, it is in no sense a tract of the times, though this may be, indeed, a time to return to the "Machiavellian" interpretation of Machiavelli. Mr. Butterfield insists that the central effort of Machiavelli's work was to establish a science of statecraft based upon the knowledge that one may gain from a study of the past. There is no willingness to save the great Florentine from the charges made against him by his contemporaries or later critics. The picture here drawn is of a man whose own precepts could not save him, who was out of touch with the world of politics in the exile's study, and who advocated a consistency in the use of power that even the casual gentlemen of the Renaissance could not stomach.

"The same maxims recur in *The Prince*, the *Discourses*, the *History of Florence*, and the private letters; the statecraft in all these writings is continuous and the exposition is of the same texture throughout; our judgment of Machiavelli and his science is independent of that special pleading which is so often done on behalf of *The Prince*" (p. 20). Machiavelli was original most of all, argues Mr. Butterfield, in contending that statecraft could be erected into a permanent science, a proposition which was rejected, for example, by Guicciardini, who held that in politics no rule holds good. To establish his science of statecraft, Machiavelli turned to history; but his use of history has three important aspects. He believed that great men might be imitated; that since political situations recur, the present problems may be solved by maxims derived from the past; and that as a guide to human behavior the history of the ancient world was superior to all other. The ancient world taught by maxims and examples.

The author asserts that Machiavelli believed the man who was wholly good might be admirable, but he despised the wicked man who could not be wholly wicked (p. 101). "Machiavelli's system was to make men more consistent and scientific in their political cunning, so the effect—the very intention—of his remarks on morality was to clear the path for the more general acceptance of the kind of statecraft that he had to teach" (p. 113). Regarded as too violent and extreme by his fellows, Machiavelli wanted to be the reformer of the ineffective statecraft of his day. He was a doctrinaire of the principle of thoroughness.

Two other aspects of this work deserve attention. Mr. Butterfield offers a remarkable analysis of the Renaissance cult of the ancient world and of the rise of the inductive method in order to place Machiavelli in his background. But, turning to England, he examines the political ideas of "the notorious politician Bolingbroke," a case of the genuine influence of Machiavelli's ideas. As the author showed the indebtedness of Machiavelli to his past, so he shows how many of the Florentine's ideas were used by Bolingbroke.

The hypothesis so ably presented here has the merit at least of consistency. It suggests that Machiavelli said often just what he meant, and that his own contemporaries could read as clearly as Machiavelli could write. This volume presents a convincing argument for a modest but intelligible theory.

FRANCIS G. WILSON.

*University of Illinois.*

*The Coal Industry.* BY GLEN LAWHON PARKER. (Washington, D.C.: American Council on Public Affairs. 1940. Pp. 198. \$3.00.)

Dr. Parker has ably analyzed the attempted solutions of the coal industry's problems as exemplified by the Bituminous Coal Code of the National Recovery Act, the Coal Conservation Act of 1935, and the Coal Conservation Act of 1937. Some attention is given to stabilization through the sales agency as practiced under the Appalachian Plan. His legislative approach to the coal problem is strengthened by several chapters dealing with the economic and social aspects of the industry, the effectiveness of private management, and a discussion of some of the legal concepts involved in the relationship of government to the coal business.

Political scientists will be interested chiefly in the author's appraisal of the efficacy of the various legislative efforts. Of N.R.A., he states: "The major defect of the code was the decentralization of authority. An industry as chaotic as the coal industry needed a strong centralized authority to prevent a renewal of old-time anarchy . . . it failed to control new capacity and did not attempt to plan market conditions." He concluded that much more success would have been achieved if a code authority had

been created that would have correlated the prices for the entire energy industry, coal, oil, and gas. The coal code apparently was open to the usual criticism of all codes under N.R.A., that the interests of labor and consumers were made secondary to the interests of the code members.

The National Bituminous Coal Commission is known principally for its abortive efforts to fix the prices of coal. Since the abolition of the Commission by executive order in 1939, its functions have been carried on by the Bituminous Coal Division of the Department of Interior. The chief criticism of the Bituminous Coal Conservation Act is that "it is a stabilization method pure and simple, and that conservation is an optional by-product." The legislation also failed to correlate all of the energy industries. "It is an attempt, not at planning, but at restricting production in one industry, so that it will not be penalized by industries which by their own devices restrict production."

Stabilization through the sales agency legalized by the Supreme Court in the Appalachian Coal case is damned by faint praise in that it has several advantages over unrestricted competition, but offers no stability to that industry. In concluding his study, the author strongly suggests some form of government ownership as the only proper solution of the coal problem. This might take the form of government royalty ownership or complete government ownership and operation of bituminous mining. The conclusion is equally applicable to any business that is now losing money and needs subsidization from the taxpayers' money. If this be the criteria, let us nationalize shipping, the railroads, textiles, and certainly all of the natural resources industries. For those readers who bother with footnotes, the lack of sequence and resulting confusion on page 160 will be disturbing.

CHARLES C. ROHLFING.

*University of Pennsylvania.*

## BRIEFER NOTICES

### AMERICAN GOVERNMENT AND POLITICS

Political scientists and others, in making post mortem analyses of the 1940 election, are naturally interested in parallels. To what extent does the 1940 election parallel the 1916 election, the 1896 election, the 1860 election, and others? Such students will not find Professor Cortez A. M. Ewing's *Presidential Elections from Abraham Lincoln to Franklin D. Roosevelt* (University of Oklahoma Press, pp. xiii, 226, \$2.50) especially helpful. The author does not examine party platforms, campaign slogans, or campaign strategy with a view to a determination of their significance in particular elections or for trends in general. It is his contention that switches from one party to another must be attributed to more subtle and elusive factors. Indeed, these motivating forces may be only subcon-

sciously felt by the voters concerned. Professor Ewing, however, believes that these factors can be brought to the surface and their importance determined by a statistical study of election returns.

In this approach, Professor Ewing has done a thorough job. He has grouped the states into sections labelled East, Border, South, Middle West, and West, and has analyzed the returns from every imaginable statistical angle. There are more than thirty charts and graphs, with much additional statistical data. Naturally, this approach does not lead to dramatic and extensive conclusions. Some conclusions are drawn, however. "Political freedom" was the dominant issue in the post-Civil War period, crowding other issues out for some time. Then, slowly the issue of interventionism developed. Looking into the future, planned economy may become the next big issue. One section, the South, because of its conscious martyrdom and its suffrage restrictions, has put itself outside the main stream of American political thinking. The wheels of democracy grind slowly, according to Professor Ewing, but they do none the less grind.—E. ALLEN HELMS.

During the summer of 1940, a group of scholars at Harvard University prepared, for the Committee on Public Administration of the Social Science Research Council, *Civil-Military Relations; Bibliographical Notes on Administrative Problems of Civilian Mobilization* (Chicago: Public Administration Service, pp. vi, 78, \$1.00). These men examined a large number of titles on the experience of the United States, Great Britain, Germany, and France in the field of civil-military relations—concentrating on administrative problems since 1914. They developed, for each country, one system of classification in a valuable introduction to a judicious selection of titles—these being arranged according to another system. Each title is accompanied by appropriate critical comment. There is a brief list on Canada's experience, without any introductory comment, and without annotation. Here is a useful guide for reading and research, and a valuable aid to those building libraries on the subject. *Administration and Organization in War-time United States; A Bibliography* (Chicago: Public Administration Service, pp. iv, 17, \$0.50), compiled by Dorothy Campbell Culver, makes available bibliographical information on a wide range of subjects related to war-time administration—national defense, health, subversive activities, post-war conditions, and twenty-six others. Although restricted to the United States, and furnishing only brief notes indicating the contents of the works cited, the publication is a useful aid to the study of civil-military relations.—ROBERT W. McCULLOCH.

Dr. Oscar Weigert has had many years of experience as a German civil servant and administrator in the field of labor problems and public em-

ployment offices. His monograph entitled *Administrative Problems of Employment Services in Eight States* (Public Administration Service, Pub. No. 72, pp. v, 50, \$1.00) is based upon material gathered during personal visits to the eight commonwealths in the summer of 1939. Students of general public administration will find in it some realistic observations on management problems which are rather universal. These include the location and size of field offices, the organization of activities (sometimes known as functionalization), centralization, supervision, standards and measurements, and caliber of personnel. Two outstanding facts seem to emerge relative to the achievements of the state employment services. The first is the coördination of employment offices with unemployment compensation administration, a move commended by the author. The second is the small proportion of labor turnover taken care of by public employment services. It would seem that a large preponderance of employers does not utilize this means of recruiting.—JOHN M. PFIFFNER.

Aware that its own gigantic defense program and increasing aid to Britain in the emerging struggle of resources and productivity may soon compel the United States to face difficult problems of price behavior, the War Department requested an investigation of the whole subject of price controls. The result is Charles O. Hardy's *War-time Control of Prices* (Brookings Institution, pp. 212, \$1.00), a combination of compendium and primer on procurement and prices in a war-time economy. In the first of the two main parts into which the book is divided, a concise introduction admirably summarizes the whole problem. Subsequent chapters explain the nature of the price problem in war-time, emphasize the importance of establishing correct fiscal and banking policies, suggest a series each of indirect and selective price controls, and discuss the administrative machinery deemed most suitable to achieve the desired ends. The critical part of the chapter on the Baruch "price ceiling" plan does not do full justice to that proposal, and has a tendency to raise up some confusion in connection with the author's alternative plan of a combined attack through fiscal policy and selective price controls. Part II consists of a series of chapters which succinctly abstract the World War experience with price controls over basic materials, food, fuel, and rents, and includes a summary of the lessons to be drawn from that effort. Specialists in economics, politics, business, finance, and social problems will welcome this compact guide as a valuable aid to the broader, more detailed, studies they will make of the problems created by a war-time economy.—GEORGE H. E. SMITH.

Evidence of the increased emphasis by scholars upon administrative law and adjudication is to be found not only in the abundance of law

review articles on the subject, but also in the growing number and variety of case-books and compilations. Among the latest of the case-books, and among the better ones, is Walter Gellhorn's *Administrative Law; Cases and Comments* (Foundation Press, pp. lxxii, 1007, \$6.00). On the assumption that it is not possible in a course in administrative law to consider in detail either the procedure or the decisions of all the administrative agencies, Mr. Gellhorn has confined his selection of cases and comments to the legal issues presented by (1) the separation of powers, (2) administrative procedure, (3) the methods provided for the relief of aggrieved persons against administrative action, and (4) the potential scope of judicial review. Although one may quarrel with Mr. Gellhorn concerning the organization and arrangement of his materials, as one may quarrel with any compiler, for that matter, the excellence of a case-book must stand or fall on the general quality of its materials and the discrimination manifested by the editor in selecting and compiling them. In this respect, Mr. Gellhorn has exercised very good judgment; and he has provided a thoroughly adequate text for courses in administrative law. The principal merit of the book, indeed, is the inclusion of some of the best literature on administrative law from the law reviews and other sources.—ROBERT J. HARRIS.

William A. Mabry has written a factual, pedestrian account of "The Negro in North Carolina Politics since Reconstruction" (*Historical Papers of the Trinity College Historical Society, Series XXII*, Duke University Press, pp. vii, 87, \$1.00). His narrative centers around increased Negro voting during the Populist-Republican fusion campaigns of the 1890's when Negroes, courted by all parties, perhaps held the balance of power. In 1898, a campaign for sound government and white supremacy defeated the Fusionists; and unfortunate race riots followed in Wilmington. Soon the victorious Democrats, contrary to their campaign pledges, disfranchised most Negroes. Here the main narrative ends. It is a story enriched by the use of several private papers of North Carolina leaders. Its chief value lies in its sympathetic and fair treatment of a segment from a controversial national problem. As a political study, it lacks adequate linkage with national affairs. Thus Populism is treated too much in isolation; the bibliography lists no out-of-state newspapers and but one national magazine. Many social and economic forces are slighted. Unfortunately, a study of this type (presumably a dissertation) must have narrow limits; yet need one be this narrow? Within his limits, Professor Mabry did a creditable piece of work.—GARLAND DOWNUM.

In *Democracy and Finance* (Yale University Press, pp. xiv, 301, \$3.00), James Allen has brought together and edited an interesting collection of

public addresses and statements made by William O. Douglas as a member of the Securities and Exchange Commission during the last two years before he became an Associate Justice of the Supreme Court. A few of the speeches deal with the nature of administrative regulation and with education in government and law; but for the most part the subject-matter of the book centers around financial practices which were the direct concern of the Commission. Mr. Douglas contends that a vitalized democracy calls for more democratic processes than we have for the control of corporations by investors; that control by self-interested financial institutions tends to destroy the efficiency of industry; and that multiple allegiance on the part of fiduciaries and their lawyers violates the avowed purpose for which these agencies are established. Above all, he contends that government should aid in the establishment of new devices through which investors can exercise some genuine control over directorates and protective committees instead of being left at the mercy of the management and brokers, both of whom may be seeking only to protect their own interests.—EDWIN O. STENE.

Elton D. Woolpert's *Municipal Public Relations* (International City Managers' Association, pp. v, 50, \$1.00) is a timely contribution to the developing science of public administration. Its eleven chapters first appeared serially in *Public Management*, from September, 1939, through July, 1940. Too frequently, a government which deserves good public relations on the basis of its policies and its operating efficiency incurs public disfavor because it neglects the human factor. Within rigid space limitations, Mr. Woolpert does an excellent job of analyzing the relations between the city government and its citizens and presenting a positive program designed to better those relations. The first step is a comprehensive survey of existing relationships, which must include not only an appraisal of the public's attitudes and opinions, but also a critical examination of the city administration from within. The weaknesses revealed can then be attacked on several fronts: personnel practices; employee contacts with citizens; physical appearance of municipal employees, buildings, and equipment; procedures for handling inquiries and complaints; tax collection methods, etc. In-service training in public relations is discussed intelligently, as are the problems of organization for public relations and municipal reporting. The monograph merits the careful attention of all interested in improved administrative techniques.—FRANK M. STEWART.

*National Policy for Radio Broadcasting* (Harper and Brothers, pp. x, 289, \$3.00), by Cornelia B. Rose, Jr., is a comprehensive survey of prevailing American broadcasting practice. On the factual side, it goes behind the mere forms of government regulation to examine engineering

data and to lay strong emphasis on economic matters, such as the organization of national networks. In the world of opinion, it discusses in a rambling way the desirable balance between points of view. Should private enterprise or the government transmit short-wave praises of American democracy to other countries? How much of the radio spectrum should be assigned to small, short-range stations capable of placing local politicians and businessmen in intimate touch with their communities, and how much of it should be devoted to powerful stations carrying programs of nation-wide interest? Should newspapers or religious denominations be allowed to own stations, or should ownership be confined to organizations exclusively engaged in broadcasting? While the author raises a number of problems, she is hesitant about presenting positive solutions. Even the final chapter bears the cautious title of "Toward Policy," and is more of a hint than a blue-print for immediate action. The general attitude is that the existing plan of commercially-financed broadcasting should be continued, with some changes, and that increased governmental supervision should be regarded with suspicion, as a possible entering-wedge for fascism.—WILLIAM BEARD.

*The Montgomery County (Ohio) Survey* (Public Administration Service, pp. 529) is a misleading title, because its great merit is that it covers every phase of local government: the city of Dayton, the city and county school districts, the public library, the villages and townships, and the Miami Conservancy District. Because of the ten-mill limitation on the real property tax for local operating revenue in Ohio, such an all-inclusive local study is essential if any true picture is to be presented. Too many single-unit local government surveys have suggested solving the financial problem of that unit by robbing another unit of local government. This survey is significant, also, because Dayton has had an efficient small-council city manager government for twenty-six years; consequently, the difficulties in which Dayton finds itself are not due to bad organization and bad procedures which research experts delight in revealing. The county portion of the survey substantially corroborates the findings of the Governor's Commission on County Government, 1934, but goes into more detail and covers more activities, such as elections and agricultural services. In general, the recommendations are constructive, sensible, and based on the detailed findings of the staff of experts. Three alternatives are suggested for county reorganization. In the matter of city council changes, this scientific procedure seems to have been abandoned for the sake of political expediency. A general coöperative arrangement among the several local units of government is suggested as a coördinating device.—O. GARFIELD JONES.



In a mimeographed study entitled *Reapportionment of the State Legislature in Michigan* (Detroit Bureau of Governmental Research, Report No. 153, pp. 68), Charles W. Shull and J. M. Leonard analyze the present distribution of members of the Michigan house and senate in relation to the population of the state and offer several plans for reapportionment of the two houses. They show by county and by broader geographic areas where under-representation and over-representation exist and offer a partial explanation of the mal-distribution of legislative membership in terms of constitutional prescriptions. Their analysis and their proposals for reapportionment will be suggestive to students confronted with like problems in other states. The chief value of their study will be to the legislature of Michigan in working out a better legislative apportionment. The physical appearance of the study and the method of exposition are not designed, however, to attract a very inclusive body of readers.—CHARLES S. HYNEMAN.

*Personnel Programs for Smaller Cities* (Public Administration Service, Publication No. 73, pp. 46, \$0.75) presents at once a report of the co-operative construction of a personnel program for Flint, Saginaw, Kalamazoo, and Dearborn, Michigan, and outlines the fundamental principles essential in a modern merit system established with a positive view. The Civil Service Assembly of the United States and Canada and Public Administration Service contributed the knowledge and experience of their staffs for the establishment of sound legal provisions and modern operating methods. Each of these cities, in adopting a system, made suitable modifications. Also, Municipal Personnel Service was created by the Michigan Municipal League to provide continuous technical assistance in the conduct of the merit systems. The features of the program presented are those of organization for personnel administration, position-classification, pay, recruitment, and an in-service program including personnel training, service ratings, promotion, transfer, discipline, demotion, and dismissal. Clarity is added to the report by keeping to principles and by inclusion of illustrative charts. The report is well worthy of the attention of officials of other small jurisdictions as well as of students of administration in general.—H. C. COOK.

*Documents and Readings in American Government* (Macmillan Co., pp. xx, 862, \$4.00), by John M. Mathews and Clarence A. Berdahl, is a revision of the first edition, familiar to political scientists, submitted by the authors in 1928. New material, relating primarily to national government, has been added because of the extraordinary expansion of governmental activity in recent years. A reorganization of material has been made in

partial recognition of the growing emphasis upon the so-called functional approach in teaching government. In Parts I and II, labeled "Constitutional Basis" and "Popular Control," the material relating to national and to state government has been brought together. For the remaining materials, the traditional separation between national and state government has been retained, while all references to local government have been omitted.—CHRISTIAN L. LARSEN.

*And Still the Waters Run* (Princeton University Press, pp. x, 417, \$4.00), by Angie Debo, is a grim account of how the Five Civilized Tribes were dispossessed of their communal lands in spite of solemn treaties that were to endure "as long as . . . the waters ran." It is a carefully documented record of the degradation of the fullbloods by the landsharks, legal exploiters, and political spoilsmen. As an historian, Miss Debo passes no judgment; but she has lived too close to the Indian Territory not to evince some personal feeling. She believes that the liquidation of tribal autonomy was "a gigantic blunder . . . that destroyed a unique civilization." She prescribes no remedy and outlines no policy, but she hopes for the revival of race consciousness and a return to collective enterprise.—MARIAN D. IRISH.

*Civil and Commercial Aviation; a Guide to Federal Legislation and Administrative Agencies* (University of California, mimeographed, pp. iii, 78, \$0.75), by Dorothy Culver, is a compact, well-organized bibliographical survey of the legislative history of federal bills, the work of federal investigating bodies, and the development of federal mail and commerce agencies in the field of civil aviation. Conspicuously absent are a few topics, such as the civil airport program undertaken by federal relief agencies.—WILLIAM BEARD.

#### FOREIGN GOVERNMENT AND POLITICS

A book of importance for students of responsible government, public administration, and the British constitution, as well as for specialists in welfare problems, is John D. Millett's *The British Unemployment Assistance Board* (McGraw-Hill, pp. 300, \$3.00), a significant case, of far-reaching implications, laid bare with a sure touch. On the dissecting table, it is a bit smelly but highly instructive. A leading domestic issue, unemployment assistance, was handled with the same clear vision and subtle strategy as were foreign issues from Manchukuo to Munich. But the story of the U.A.B. not only deals with another clever trick that backfired, surprising chiefly its authors, but it also points up the temptation to evade the basic implications of the system of responsible government—the danger to democratic institutions, not from the fifth column, but from

the first column, the group largely instrumental in their development. Those numerous friends in the United States of some particular and well-beloved special function of government who hope to find a quiet water for it out of the stream of politics will find Millett's pages sober but instructive, and doubtless welcome, reading unless they are concerned over low politics to the exclusion of high politics. (The U.A.B. episode was one not of stealing a ride but of stealing the road). The book focuses on the "independent" status of the Board. It is a scholarly study; the author goes to the record, line and page, but he also speaks with the persuasiveness of one completely familiar with the off-the-record story. The background, origin, relations with the Ministry of Labor, with Parliament, with the public, and the nature of the Board's functions take five chapters. Three others consider more generally "Ministerial Responsibility versus Administrative Autonomy" (a prelude to reviewing the Board's record), "Taking Relief Out of Politics," and "Portent for the Future." Not the last word on responsible government, but a valuable contribution to its study. Not a "leftist" book; just political science. No flaws worth noting in a 300-word review.—GEORGE A. GRAHAM.

In *The True Facts about the Expropriation of the Oil Companies' Properties in Mexico* (Mexico City: Government of Mexico, pp. viii, 270), the Mexican government has taken issue with that interpretation of the oil controversy found in the series of pamphlets published by the Standard Oil Company of New Jersey and in Donald Richberg's *The Mexican Oil Seizure*. The charge of illegality of the Mexican seizure is founded primarily on three grounds. First, such seizure was a violation of Mexican municipal law. Second, it was a violation of international law. And third, Mexico is unable to make just compensation for the properties seized. As to the first, it is said that the Mexican supreme court was correct in holding that under Mexican law the companies had no property rights in sub-surface oil. It is well established in United States as well as Mexican law that "due to the migratory nature of the oil, this does not become the property of the surface owner until it is brought to the surface and reduced to actual possession" (p. 135). United States cases are cited in support of this principle. As to the contention that the seizures violated international law, the thesis of the rebuttal is that "no doctrine exists in the international order establishing any rule of universal acceptance which makes immediate payment (not even deferred) obligatory in cases of expropriation for reasons of public utility" (p. 197). The fourth chapter seeks to prove Mexico's ability to give adequate compensation for the properties taken. A good statement of aliens' property rights under international law is found in Professor Josef L. Kunz's "The Mexican Expropriations," in *Contemporary Law Pamphlets* (New York University School

of Law, pp. 64). After summarizing the international law relative to expropriation of the property of aliens generally, the author discusses the Mexican land and oil seizures. Having paraded much evidence, he concludes that "the arguments of Mexico are legally untenable" (p. 60).—WILLIAM M. GIBSON.

Exclusive control over education by totalitarian states is a challenge to federated democracies to reevaluate the relationships between their political systems and educational policies. In his *National Government and Education in Federated Democracies: Dominion of Canada* (Science Press Printing Co., pp. xvi, 676, \$4.50), the late James Collins Miller directs attention to the urgent necessity for national leadership in education in Canada. This study, prepared with scholarly precision, outlines the constitutional background, historical development, and present status of the relation of the Dominion government to education. More specifically, the discussion covers land grants in aid of education before and after confederation, rights and privileges of religious minorities, national defense and education, education of the Indians, national government and vocational education, voluntary educational organizations national in scope, the educational branch of the Dominion Bureau of Statistics, departments of the national government and higher education, the National Research Council and higher education, the Royal Society of Canada, and concluding observations and suggestions. Documentary sources, including court decisions, are liberally quoted throughout the volume. The author has drawn also upon a rich background of experience in a provincial department of education and upon a wide acquaintance with Dominion and provincial officials to present a comprehensive picture of Canada's educational problems. His recommendations respecting the rôle of the national government in providing adequate educational services for Canada as a whole should not be disregarded in the reshaping of Canadian federalism necessitated by present and post-war conditions.—LUELLA GETTYS.

Many British municipal periodicals are quoted by Don K. Price and James L. Sundquist in *The British Defence Program and Local Government* (Chicago: Public Administration Service, pp. vi, 55, \$0.75). They illustrate admirably the new problems thrust upon local authorities as administrators of national policies, training 1,200,000 air raid precautions volunteers, doubling their police forces, quadrupling their fire brigades, evacuating and receiving 1,500,000 persons, acquiring land for allotments, preparing to repair damaged houses, salvaging refuse, and allowing their clerks to function as national registration officers and food executive officers, besides themselves appointing them air raid precautions controllers. These documents show to what extent the national government

has trusted the discretion of local authorities in this spending of national money. Reference is made also to the state's activity in coördinating such local services as hospitalization and fire-fighting on a regional scale for the first time. Somewhat less attention is paid to the relief afforded to local public assistance committees by the national Assistance Board's assumption of responsibility for the uninsured unemployed and for the inadequately pensioned aged. The period covered is that of intensive preparation from 1938 to the spring of 1940. It is to be hoped that the subsequent period of intensive fighting may be surveyed from the same practical standpoint of municipal administration.—W. HARDY WICKWAR.

Frieda Wunderlich has published under the auspices of the New School for Social Research (in particular, of the Graduate Faculty of Political and Social Science) the first essay "in a series dealing with German social policy during the life of the German Republic, 1918-1933." The current study, *Labor Under German Democracy—Arbitration, 1918-1933* (pp. xiii, 100), is a succinct presentation of the essential factual material and relevant public policies. The study shows the drift toward the increasing importance of state action and the effects on labor organization of that development. The series will be important for understanding contemporary Germany if the quality holds at the level of this beginning.—CHARLES B. HAGAN.

#### INTERNATIONAL LAW AND RELATIONS

Since the renewal of Sino-Japanese conflict in 1937, many works describing American policy and interests in Eastern Asia and recommending types of future action have appeared. These have varied from scholarly summaries of Far Eastern events, combined with rational defense of the Pacific legal order, such as W. W. Willoughby's latest book, to sensational works recommending the immediate ruin of Japan or immediate "realism" in appeasing Japan. Since many newspapermen have written sensationally, it is especially interesting, in *Our Future in Asia* (The Viking Press, pp. 306), by Robert Aura Smith of the *New York Times*, to find the lucid, well-argued statement of a relatively fresh point of view, a return to the imperialism of Beveridge. In Chapters I-III, "Our Stake in the South China Sea," the author develops the significant but often neglected picture of this area as economically complementary to us, with raw materials which we lack most—rubber, tin, coconut products, antimony, kapok, quinine, etc.—and needing American exports. Chapters IV-VI, "Threats to the Status Quo," state the main thesis, that of "good imperialism," and appraise native nationalism, American retreatism, and Japanese aggression in relation to this. Chapters VII-IX, "Our Philippine Venture," state a viewpoint common among Americans in the Philippines:

the United States should develop its Philippine interests, instead of neglecting or relinquishing them; and Philippine autonomy or independence should be subordinated to the economic welfare and military security of both countries. In five concluding chapters, the author sketchily describes the legal position of the United States in the Western Pacific, portrays American relations with China and with Japan, outlines the course of Japanese aggression to date, and concludes with "The Defense of the South China Sea." Particularly impressive is Mr. Smith's recognition of America's enormous political and military stake in Nationalist China. The author's concluding recommendations, however practicable, are of the highest interest: repeal of the Japanese exclusion act, "to clear our decks and clear our consciences" (p. 290); settlement of all Philippine issues by a compromise inauguration of mercantilism and autonomy; development of naval and air strength based on Manila; supply of further aid to the Chinese government; embargo on war materials to Japan; and willingness to face all contingencies. Mr. Smith, whatever the merits of his thesis, at least offers American democracy a chance at the initiative, and escape from the disheartening blind alley of negative defense. For this reason, his work is probably too bold to enjoy wide acceptance.—PAUL M. A. LINEBARGER.

L. Tung's *China and Some Phases of International Law* (Oxford University Press, pp. 210, \$2.25), published under the auspices of the China Institute of Pacific Relations, adds another and more important volume to the list of treatises describing the interpretations of international law by particular states. On a very limited scale, this resembles Hyde's *International Law, Chiefly as Interpreted by the United States*. The author brings to his work the results of academic study in this country plus practical experience as Secretary to the Central Political Council of the Chinese National Government. The book purports to cover only certain phases of the law. Included are the topics of jurisdiction, nationality, diplomatic and consular relations, and pacific settlement of international disputes. Each of these is broken down into its component parts, such as jurisdiction over territory, over ships, and over persons. The treatment is further limited in that it embraces only the period since 1842. More especially, it is concerned with legal developments since 1911. Much use is made of treaties, laws, and regulations. Indeed, this is the first work on international law which has brought to the knowledge of the profession the contents of Chinese laws dealing with the subjects at hand. Judicial decisions come in for less attention. Notwithstanding the important place occupied by extraterritoriality, the treatment of this is restricted, and no application is made of the decisions of the extraterritorial courts. While there are some excerpts from diplomatic correspondence, they are not as numerous

as might be desired. Some new light is thrown upon the legal aspects of the Chinese boycott. The author is essentially a positivist. There is little regarding whatever philosophy the Chinese may have toward the law of nations. Dr. Tung has made an excellent start on a large subject. It is to be hoped that he will extend his writings to cover China's interpretation of other phases of international law. In particular, at a time when there is such need of rethinking the theoretical premises of the law, it would be helpful to have the benefit of counsel along such lines from one through whose race flows the wisdom of centuries.—NORMAN J. PADELFORD.

In his *Pacific Islands Under Japanese Mandate* (Oxford University Press, pp. x, 312, \$2.50), Tadao Yanaihara, formerly professor of economics, Tokyo Imperial University, has made the first thorough and detailed study of native life in the Mariana, the Caroline, and Marshall Islands to appear in English since Japan assumed responsibility for these western Pacific groups during the World War. The organization and the content of the study may be seen in the chapter headings: geography, history, population, external economic relations, economic life of the islanders, native money, the land system, the modernization of economic life, society, religion, and government. Throughout, the emphasis is on the life of the native peoples as it has been brought in contact with the colonizing efforts of Spain, Germany, and now Japan. In the presentation of the factual story, Professor Yanaihara has marshalled an impressive body of factual material gathered from a wide group of sources and from his own observation. Much of this material appears, in English at least, for the first time. As a study, therefore, in social and cultural history, this book has much to recommend it. As a political study, it is less satisfactory. The chapter on Japan's mandatory government does not go far beyond a mere statement of the forms. There is no discussion (and this is perhaps unavoidable) of Japan's observance of the military terms of her mandate. Likewise there is no discussion of the position of the islands in Japan's scheme of naval strategy in the Pacific, or of the relation of this subject to the legal status of the islands as a Class C mandate. However, within the more limited and less controversial fields to which the author has confined himself, his contribution is substantial.—PAUL H. CLYDE.

The World Peace Foundation has brought out the second annual volume in a series begun in 1939, entitled *Documents on American Foreign Relations* (pp. xxx, 875, \$3.75), and edited by S. Shepard Jones and Denys P. Myers. The hectic atmosphere of recent months is well indicated by the fact that while the first volume, covering a period of eighteen months (January, 1938—June, 1939), included about 300 documents in less than 600 pages, this second volume, covering a shorter period of but a year

(July, 1939—June, 1940), is considerably bulkier and includes nearly 500 documents. It is also particularly significant that the amount of space given to documents on national defense has almost doubled. This volume is patterned closely on the first in its scheme of classification, with two significant new chapters added (on "Moral Embargo" and "The Department of State and the Foreign Service"), and one chapter broadened from "Refugees" to "Treatment of Persons" (including papers on relief, evacuation of citizens, control of aliens, passport regulations, and refugees). A few documents are included that antedate the period covered, but that are particularly relevant to the materials of the period (e.g., the Johnson Act of 1934, placed with the materials on financial transactions); and a number of documents are included that do not strictly relate to American foreign policies but that are important as a background to American policies, such as the German-Russian Pact, the British-Polish and French-Polish Agreements, and a dozen other documents with respect to the outbreak of the war; the German Memorandum to the Danish and Norwegian Governments, the Norwegian White Paper, and half a dozen other documents with respect to the invasion of Scandinavia, and similar documents with respect to the Low Countries and other phases of the war. Altogether, it is an excellent collection, well edited, and conveniently arranged, the usefulness of which is also increased by an index in this second volume to the two volumes now issued. It is to be hoped that this admirable series can be continued.—CLARENCE A. BERDAHL.

While it is commonly recognized that the League's sharp decline into desuetude began with the Italo-Ethiopian fiasco, it is not as well known that this failure occasioned an effort among many member states to ward off such decline by taking lesson of experience. The first systematic study of the official documentation of this effort is S. Engel's *League Reform; An Analysis of Official Proposals, 1936-1939* (Geneva Studies, Vol. XI, Nos. 3-4, pp. 282). Though the question was called formally the "application of the principles of the Covenant," it really involved consideration of radical changes in the League's structure. Little, indeed, resulted except elaborate documentation, and the formal action taken was only on the less difficult issues. The Assembly passed resolutions on the coördination of the three peace covenants and on the separation of the League Covenant from the Peace Treaties; moreover, to increase collaboration with non-member states, there was set up a Central Committee for Economic and Social Questions. Diversity of opinion, if not half-heartedness, prevented action on the larger problems such as that of either increasing or lessening the coercive obligations. Dr. Engel's presentation of



the many questions and views is valuable if only because, as Professor Pitman B. Potter observes in an introduction, the subject of League reform raises virtually all the major issues of international organization. Perhaps the most important issue placed in relief by the recent history of the League is whether failures of international organization are due more to legal machinery or to men. Dr. Engels' own observations seem to point generally to the same conclusion that the reform of the League's machinery is less important than the achievement of solidarity and good faith among its members.—ALBERT K. WEINBERG.

*The Economics of War* (Prentice-Hall, Inc., pp. xiv, 319, \$2.75), by Horst Mendershausen, is a clear, simple statement of the economic problems presented to an industrial nation for solution during a major war. Part I covers the needs of a warring nation, in men and matériel. Part II deals with the proper distribution of national resources, emphasizing the need for a full application of priorities. Parts III and IV deal with the problems of neutrals who willy-nilly must develop a war-time economy due to the local dislocation produced by belligerent operations—and with the problems of post-war economics. Both of these subjects receive the full treatment that they deserve, but do not always receive, in studies of war economics. Among other important points, the author notes that price-fixing has too often been confined to protecting the government rather than holding down civilian living costs. He emphasizes a point often overlooked, that the term "strategic and critical materials" is purely relative, since new sources of supply or a reduction in demand due to a change in the character of munitions may remove a material from the list. He stresses the need for preventive rather than protective rationing. He points out that reparations can be collected after a war only if the nation's productive capacity is fully engaged and its workers fully employed, in which case payments may be turned directly into filling new human wants. There is some doubt in the reviewer's mind concerning the author's estimate of the necessary ratio between soldiers and industrial workers. Writers on this subject often place it so high that civilian workers would outnumber total males. The author appears also to have given insufficient attention to the need for creation and maintenance of strong national morale if a high war potential is to be maintained, though recognizing that a low health standard may seriously impair morale. One might also wish for a simplified summary or discussion of the war potentials of the leading powers which are included in an appendix. However, the book is an able presentation of the economic problems of war today, drawing heavily as it does on the actual experience of the present belligerents.—HAROLD J. TOBIN.

At a time when the map of the world is being changed before our very eyes, Matthew M. McMahon's *Conquest and Modern International Law* (Catholic University of America Press, pp. vi, 233) is a most valuable contribution to an understanding of the problems involved in these changes made essentially by the use of force or the threat of force and compulsory cession. With the political or ethical values implied in these conquests, the author does not concern himself. His is merely an examination of the legal bases of conquest as a valid title viewed from the standpoint of theory and practice of states. And to this he brings a wealth of material from the earliest writings of publicists, tribunals, and treaties to those of the present day. The author's theme is simple: "Conquest is one of the accepted legal modes by which a state may acquire territory from another state under the laws governing the international society." That this is so should not be at all surprising, for as a matter of fact "almost every state of the family of nations has gained title to at least some of its domain by conquest." Yet it is Mr. McMahon's view that under international law as it exists today there are certain "legal limitations on conquest" which have been accepted by international society. It is only here that one really finds fault; for what in reality appears as mere objections to the use of compulsory cession, stated perhaps in the form of treaties, is deemed to have the effect of law. In the main, however, this work is scholarly as well as timely; and it contains many quotations, adequate citations, a good index, and an excellent bibliography.—BENJAMIN MUNN ZIEGLER.

The Balkan crisis of 1908 has long been a happy hunting ground for diplomatic historians. In his *European Diplomacy in the Near Eastern Question, 1906-1909* (University of Illinois Press, pp. 124, \$1.50 paper, \$2.00 cloth), Wade Dewood David enlarges the picture by including the significant attendant difficulties of the immediately preceding years. The Macedonian problem and the friction over the Balkan railways are provided as part of the picture, which includes also the Young Turk Revolution and the Bulgarian and Bosnian crises. The other special contribution of this study is an emphasis on the Turkish point of view, with the inclusion of a considerable number of Turkish sources. It is a well-documented and intensive study, with a little more breadth than is usually applied to this period in which the world was presented with the futile and ineffectual finale of the Concert of Europe.—WILBUR W. WHITE.

#### POLITICAL THEORY AND MISCELLANEOUS

*Sumner Today* (Yale University Press, pp. xxvi, 194, \$2.50) is a volume of selected essays to mark the one hundredth birthday anniversary of this "Darwin of the social sciences," published under the auspices of the Sumner Club of New York and edited by Maurice R. Davie. Included are

introductory sketches of the man and his work, and, interspersed among the fifteen selections, brief commentaries by about thirty leaders of American thought and life. Among these, the conservatives outnumber the liberals, because, although equal numbers of both faiths were invited to contribute, some of the latter "—many of them public office-holders—were less inclined to state their views." There can be no disagreement that Sumner was a remarkable teacher and a provocative writer. Upon his standing as a scientist, estimates differ, although in most cases with evident pains to be judicious. According to A. G. Keller, Sumner's method was "to let facts tell their own story." To W. F. Ogburn, he was "a powerful voice in the cause of science in societal affairs," while to Frederick C. Mills, "an essayist . . . not a scientist." To Harold G. Moulton, the most striking impression gained from the address on commercial crises is its applicability to present-day conditions; while to Evans Clark the sharpest impression from the same is "its incredible antiquity. . . . Professor Sumner lived and wrote about a world that is no more." Similarly, to Bruce Bliven, the essay on free trade is an echo of the age of innocence, tangential and without meaning to the real problems of today. H. L. Mencken applauds "the modest but memorable" essay with the ironical title "Absurd Effort," but thinks the present age not likely to get anything useful out of it. This reviewer will not add to the testimonials, except to subscribe to Beard's estimate, commenting upon the characteristically pithy "Earth Hunger," that "these pages illustrate the elusive nature of thought about complicated human affairs and the oracular character of Mr. Sumner's essays on things in general," yet, as all here would agree, that "without him we should be poorer in insight and understanding." The commentators, in addition to those already mentioned, include Bruce Barton, Edwin Borchard, Isaiah Bowman, John Chamberlain, William L. Chenery, Colby M. Chester, Karl T. Compton, Henry S. Dennison, William Green, Frank H. Hankins, Virgil Jordan, Waldemar Kaempffert, William S. Knudsen, Eugene Meyer, Frank M. O'Brien, Julius C. Peter, H. W. Prentis, Jr., Charles Seymour, Roger W. Straus, Mark Sullivan, Norman Thomas, Willard L. Thorp, and George E. Vincent.—WALTER SANDELIUS.

The reviewer is impressed by the completeness of *Democracy in America* (Thomas Nelson and Sons, pp. xvi, 623), by William M. Muthard, Stanley M. Hastings, and Cullen B. Gosnell, and issued as a volume in the Nelson Social Studies Series, edited by Arthur C. Bining. With its emphasis on making American democracy work, this text is simple, realistic, and direct. Teaching and learning activities, references, pictographs, and illustrations are all well-chosen and painstakingly prepared. Designed for a "functional" approach to the problems of democratic living,

the book furnishes the teacher with almost every possible aid. Especially good are the pupil activities suggested to accompany each unit of work. The teacher will understand, however, that merely following a "functional" text, no matter how excellent, will not guarantee functional results. The authors have not hesitated to set forth the democratic ideal as something ahead of us. Boys and girls should be led to work for progress in their desire to make American democracy a reality.—BURR W. PHILLIPS.

RECENT PUBLICATIONS OF POLITICAL INTEREST  
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*University of Illinois*

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105 Harris Hall

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## LABOR'S PART IN WAR AND RECONSTRUCTION

MARSHALL E. DIMOCK

*U. S. Department of Justice*

### I

Nothing is of greater importance to national defense than the morale of those who do the actual work, the men who pump the petroleum, roll the steel, build the ships and planes. An ounce more of spirit along the assembly line is worth more than a correspondingly higher percentage of armaments in a clash of troops. This is because modern wars are won by industrial strength, a fact that we are almost tired of hearing repeated, but the truth of which we are observing with every passing month of the present war.

War industries require raw materials, trained leadership, and sufficient funds to support the costly effort. A nation needs all of these. But all depend for their success upon the efficiency and ardor of designers, foundrymen, and machinists. Do they put their minds and backs and hearts into their work? Or do they merely go through the motions?

Organized labor may be fitted into a war economy in one of several ways. The workers can be virtually enslaved, as in Poland, and forced to labor with armed sentries standing over them. This method has never proved very efficient. Another way, which Hitler and Mussolini are using, is to appeal to the emotions of patriotism, to work men into a frenzy which must then be sustained. This plan is successful only so long as the tide of battle is consistently favorable; when it changes, the effect is not unlike the day after a New Year's Eve party. The third approach is that which the United States and Great Britain have evolved, the method of satisfying labor that the rules which apply in peace-time will not be jeopardized during war-time—a program of voluntary coöperation in which labor itself engenders the fighting spirit which wins

wars. This formula, like democracy itself, is the hardest to put into effect and to maintain; but it has the unique advantage of providing a morale which has staying qualities. It insures a labor body which is nourished on good red meat rather than shots in the arm.

In the present conflict, each of these situations exists. At its close, which is most likely to emerge as a factor in world reconstruction? How can anyone say? No one knows which side will win, whether all the world will become involved, how exhausted the major combatants will be, or whether successful revolutions will not occur in some of the dictator countries. Nevertheless, taking into account the trend of development in recent years and weighing in the balance the leadership and other factors which enter into a final computation, some answer may be found that will help to guide us as a nation in the work that lies ahead.

If the dictator nations prevail, the rulers of the new European order may be expected to suppress any independent labor movement, because such activity cannot be tolerated under a monopoly of power. If, on the other hand, the democracies are victorious in the military issue, labor unions will continue their onward course of development toward a greater influence in the affairs of the nation and the world. To say that such a course is inevitable would be reckless exaggeration; but to say that it is natural under conditions of democracy is a truism, for the increased dignity and influence of the nation's workers is the upward surge of democracy itself.

Even if the trade-union movement were eclipsed following the war, however, its power and influence would not be lost. The forces within it are too strong to make such a prediction likely. If we may assume, as I do, that prognostication is for long periods, and that an institution with a history of steady development and strong leadership is likely to reappear, even if temporarily forced underground, then organized labor will emerge as a crucial factor in the statecraft of the century lying ahead.

Any individual or group is likely to exert influence if infused with the vitality which comes from being close to life's realities. The outstanding record of American business leadership is largely explained by this physical factor—the vitality of pioneers flowing in the sons of those who conquered a wilderness and built thriving communities. When the dominant group gets away from these life-giving forces, its influence wanes and may finally disappear, as it is superseded by a more virile strain. The operation of this cycle is

illustrated in the recent experience of Great Britain: the sons of aristocratic families did not pass muster in a time of grave national crisis, and hence into the breach have gone the close-to-the-earth sons of working families, the Morrisons and the Bevins.

The influence of earth-given virility reaches its peak of effectiveness when the individual or group acquires the competence and sophistication needed to compete successfully with those who would shape the nation's future. Barring accidents of fortune, this combination of qualities is well-nigh unbeatable. It is at this point that the labor leadership of Great Britain seems to be today and in the years just ahead. It is into this influential position that our own American labor leadership seems to be steadily progressing.

In a democracy, there is no compartment of life which is not the concern of the labor unions. They are first of all social units, providing wage-earners and their families with an outlet for their gregarious instincts, helping them to fulfil their fraternal and social cravings. Similarly, they are educative; for they train apprentices, test and elevate leaders, and encourage civic virtues. Their economic function is perhaps the most pronounced of all, because in the bargaining power they are able to muster is found the natural balance to the power of owners and managers, a power which would otherwise be vastly unequal now that the workers no longer own the tools of production. And finally, partly because workers have realized their reliance upon organization under changed technological conditions, labor unions have come to exert important political influence. Thus, in a democracy, labor unions are social, educative, and political as well as economic in their function. They are one of the plurality of governments which constitute a free state.

Although the scope of labor unions is potentially so universal, it will be realized, of course, that what they are able to accomplish depends upon the restrictions and opportunities of the political system in which they operate. Three main rôles may be distinguished. They may be in a position of protest against the existing order, not fully recognized, and hence seeking to cast aside restrictions and to gain full freedom of action. Or they may be fully recognized and free to act within broad limits, as they are within our competitive order of the day; so situated, their chief characteristic is that of a balance wheel in an equilibrium economy. Finally, in a system which does not depend upon a balancing of economic groupings but instead raises one or another group to supremacy,

the labor union may be a central organ of administration and control, merged with the government itself and sharing its monopoly of power. Examples of these three situations are Great Britain prior to the Taff Vale decision at the turn of the century, the United States today, and the U.S.S.R. today.

American labor is attached to this middle position. It wants influence, not supreme power. It wants *a* voice, not *the* voice. This is not to say, however, that it is content with what it now has or that it feels that its potential social contribution is being fully used.

## II

The shape of things to come is revealed in part by the growing influence of labor leadership in war-time Britain.

At the outbreak of hostilities in September, 1939, a coalition almost solidly Conservative was in power and the Labor party, small and divided, was in opposition. The Government was one of older, more conservative men. The void caused by a "lost generation" of war victims, 1914-19, was never more apparent. Anthony Eden and Winston Churchill, despite the disparity in their ages, could agree that the leadership was lacking in vigor and adaptability. The Labor opposition, though small, contained among its command some men of outstanding ability, such as Herbert Morrison, formerly Minister of Transport and leader of the London County Council, and Major Attlee, one-time Postmaster-General. In addition to being numerically small in Parliament, however, labor suffered from divisions within its own ranks. Sir Stafford Cripps, brilliant barrister and parliamentary orator, had broken with the party command and was virtually ostracized. Far more ominous than this, however, was the long-standing rift between labor's trade union and parliamentary leaders, based upon the former's fear of political domination in a socialist state and the latter's thinly-veiled contempt of union officials' preoccupation with their union affairs and their resulting social shortsightedness. This disagreement in program and strategy, although usually kept from public knowledge, ever so often broke forth in full view, to the consternation of labor's rank and file and the glee of the Tories. Thus, politically speaking, it was a weak and divided Britain that declared war in September, 1939.

It was not long before labor troubles caused an acute retardation of the country's war effort. The seriousness of any failure to

coöperate can be easily calculated, for Britain was already alarmingly unprepared, and modern wars are won by industrial strength. As we have pointed out, industrial mobilization cannot boom unless organized labor throws its back into the process, for when national survival is at stake the morale of a country's man-power is central.

Prior to the outbreak of war, the general procedure of British peace-time rearmament was to inform the industries concerned by how much output was to be increased, but not how it was to be increased. The details were left to industry and labor to work out, and to bring this about small joint committees of employers and labor were set up by the government authorities in each field. The Minister for the Coördination of Defense was expected to keep in touch with these groups. With the outbreak of war, business men were moved into positions of authority, but labor leaders were left out. This proved the greatest industrial mobilization mistake of the first year of the war.

During the six-month period, September, 1939, to March, 1940, unemployment actually increased because of the dislocation of industry and the lack of thorough planning; an acute shortage of skilled labor crippled the armament program; the cost of living skyrocketed while wages rose much more slowly, causing widespread hardship and complaint; and, perhaps most serious of all, labor was suspicious rather than geared to inspired efforts. One obvious reason for labor's aloof attitude was doubtless the passive state of hostilities during these early months. Other causes were more inherent and significant, however, and grew out of the Government's failure to give labor its due representation in the higher councils of state and to understand the psychology of the working-man.

The general public, as well as labor, felt that the controls exercised by business men taken from their respective industries were basically wrong and that such men could not be expected to push through price and other restrictions until military events forced such action or until labor's suspicion had been allayed. This suspicion, growing out of non-representation of workers, was one of the principal reasons for labor's reluctance to accede to the new program. And yet it was apparent to all, labor included, that fundamental alterations must be made if the nation's economy were to become a match for that of the totalitarian powers.

An inventory of the labor pool revealed a shortage of skilled



draughtsmen and designers, particularly those of ingenuity and originality; that there was likewise a shortage of highly skilled mechanics, capable of adapting and repairing, as well as operating, intricate machinery; and that there was a dearth of production managers, shop foremen, and engineers trained in the technique and requirements of mass production. Candid analysis disclosed that for years the number of apprentices attached to the skilled occupations had been held down, and with the demand for war goods coming on top of the productive activity attending good times, this shortage of skilled operators was acute. One of its first results was the reemployment of older people who formerly had been skilled operatives. It led, further, to negotiations between employers and trade unions for some relaxation of the strict rules controlling apprentices. The crisis also required the speeding-up of training programs in order that the semi-skilled might advance into skilled positions. During the period under examination, however, trade unions were generally loath to agree to the entry of a large number of new skilled workers until the urgency had been more clearly demonstrated. So it was with the recruitment of women workers. Organized labor demanded that a formula be determined in advance of dilution, and that in fixing that formula its leaders be given positions of influence and responsibility. Labor also protested against the conscription of its skilled workers, contending that they could play a more strategic rôle in industry than in the armed forces.

On top of these criticisms, caused by lack of careful planning and failure adequately to include labor leadership and its point of view, stood the uncontrolled and rapidly mounting cost of living. When the Prime Minister announced that wages could not be expected automatically to follow each advance in the cost of living, and that pre-war standards might have to be sacrificed if victory were to be achieved, labor made it clear that governmental fiat would not suffice. Ernest Bevin, General Secretary of the Transport and General Workers Union, replied that ninety per cent of Britain's labor was receiving wages which left no margin for any increase in the cost of living, and that to freeze such wages at existing levels would "result in an outbreak of labor troubles of a serious character." Labor therefore demanded a wider degree of price control and an equalization of sacrifice among all classes.

So long as labor leadership and the labor viewpoint were left

unrepresented at the top, the man at the lathe lacked confidence in the Government. An American observer summarized this situation as follows: In the beginning the Government tended to overlook the part that labor leaders would have to play in the new organization of industry. Trade union executives who expected to be consulted found themselves presented with a *fait accompli* or were actually ignored. As early as September 13, 1939, Arthur Greenwood warned that labor must be consulted. "It claims equality in the direction of policy and in the administration with employers and with the departments concerned."<sup>1</sup> This was a sharp warning, but it led merely to an announcement by the Prime Minister that the departments would be expected to coöperate with the trade unions and that joint committees would be set up in major industries. But this was not enough. Eight months after Britain entered the war, morale was still at low ebb.

Looking back on the first few months of the war, Sir Walter Citrine, General Secretary of the Trades Union Congress, said on January 6, 1940: "While the unions would not meekly acquiesce to attempts to reduce the standard of life of the workers or to curtail their democratic rights, labor has responsibilities as well as rights, especially during a life and death struggle with dictatorship." This showed that labor was willing to coöperate fully if met half way. But, as an American reporter stated two months later, "labor is still showing hesitancy, is waiting to be shown." The fundamental trouble, he continued, is the "public feeling that the Government has neglected the psychological aspects of the wage control question."

On May 10, 1940, eight months after the outbreak of hostilities, Winston Churchill succeeded Neville Chamberlain as prime minister. Immediately there was a change of attitude and policy toward labor. With this change, labor got solidly behind the war effort and industry began to hum.<sup>2</sup> The day after Churchill took office, Major Attlee was appointed Lord Privy Seal and prime minister's deputy in the House of Commons, while Arthur Greenwood was made

<sup>1</sup> Arthur Greenwood, *Why We Fight; Labour's Case* (London, 1940), p. 139.

<sup>2</sup> I do not deal with Labor's rôle in the House of Commons during the early months of the war. As W. Ivor Jennings has said, it was one of an "electoral truce," not a party truce. Furthermore, it was a period of unequal equilibrium, even in Parliament, where labor feeling was not so strong as in industry itself. See Jennings' article, "The Formation of Great Britain's Truly National Government," in this *REVIEW*, Aug., 1940, pp. 728-736.

minister without portfolio. Both immediately assumed positions in the Inner War Cabinet. This was May 11. Two days later, dynamic Ernest Bevin was selected as Minister of Labor and National Service and Herbert Morrison became Minister of Economic Warfare. The disequilibrium was rapidly being righted. That same day, the British Labor party announced its overwhelming support of the decision of its party leaders and endorsement of Labor's entry into the coalition government. "Smart Winston Churchill," observed an American weekly, "knew that his only chance to win the war lay in the enthusiastic support of the working classes."

Once the confidence of labor had been won, its governmental leaders were undeterred in promulgating stringent orders and regulations. To whip up munitions production, Laborite Bevin immediately established a Labor Supply Board of four employers and labor leaders with himself as chairman, outlawed strikes, made the referee's decision final and binding on both sides, substituted rest periods for vacations, took steps to prevent unwanted mobility of labor, and moved to peg wages. A month after he took over, Bevin proclaimed: "We are producing order out of chaos, and chaos it was when we went in." The facts supported his assertion, for in some plants production had been speeded up one hundred per cent in a fortnight.<sup>3</sup> Bevin, described as the "Joshua who will take over if and when better times come," came out militantly for socialism at the end of the war, and sooner if possible. "The British labor movement," said he at the Trades Union Congress in October, "came to the rescue of this nation and the Commonwealth at the blackest hour of its history. The reconstruction of the world must come about through harnessing the rising masses of Labor, to whom the future really belongs."<sup>4</sup> These ideas, which would have caused an extreme case of jitters during the Baldwin-Chamberlain era, sounded good to most Britons when Stukas were dive-bombing. "All skeins of diplomacy," asserted a *London Express* editorial, "all military feats, panics, rumors, sorties, and full assaults recede into their proper perspective behind the dominant figure of this war. This figure is the British workingman, his arms bared, his muscle flexed, and the sweat upon his brow."

Less than a month after entering the Churchill Government, Labor held three of the six positions (later increased to eight) in the innermost council of the British Empire; for Ernest Bevin was

<sup>3</sup> *Time*, June 17, 1940.

<sup>4</sup> *Ibid.*, Oct. 21, 1940.

added and soon became "the apex of the pyramiding trade-union strength," while Herbert Morrison moved from the Ministry of Supply to the all-important post of Home Security, and party leader Attlee stayed on as Churchill's deputy. "Labor cannot be a prisoner in this administration," observed H. N. Brailsford, for the Labor leaders were given the chief charge of things and of men. On them fell the gigantic task of focussing the resources of an empire on self-survival. It is worth noting that Mr. Churchill has had the wit, Brailsford continued, to choose a miner, for the first time, to run the Ministry of Mines.<sup>5</sup> Indicative of the new spirit which prevailed was the fact that within a month after Churchill took over, Minister of Labor Bevin had recruited an additional force of almost a million men who at one time or another had had experience in the engineering industries, but who were not so engaged at the time when the inventory was taken. With Labor at the helm, dilution was not the spectre it had previously been.

One of the outstanding lessons of the first year of Britain's war-time economy is that a democracy can choose either to repress unions or to win the war, but it cannot do both at once. High morale and productive efficiency are the chief requirements for the national purpose, and they demand the willing coöperation—yea more, the spirited consecration—of the workers.

### III

When a democracy goes to war, there is bound to be a lag in the adjusting of relationships between capital and labor. Without thinking much about it, business executives naturally appeal to patriotic necessity as a sure means of bringing labor unions into line. Labor, on the other hand, is not unconscious of its strategic rôle in a war economy or of the difficulties of recouping gains once sacrificed. Hence a conflict sets in, with public opinion as the prize and the final arbiter. It is a slow and costly process. To do away with it altogether would be to stifle the basic freedoms inherent in our system. To shorten and smooth over the process of adjustment is the task of greater understanding.

There is much truth in the frequent observation that labor difficulties are at root psychological. And yet there is the danger of over-simplifying the explanation and of slapping on the label "psychological" indiscriminately.

<sup>5</sup> *New Republic*, June 10, 1940.

The key word in the vocabulary of industrial peace is "confidence." Workers trust leaders who are their very own, who come up from the ranks and remain identified with them. They distrust people they do not understand and whose background and aspirations are different. For their own leaders, in whom they have confidence, they will make any sacrifice which the larger interest requires. For those in whom they do not have confidence they will not relinquish any part of their hard-earned gains, even if their trade union loyalties at times appear to conflict with their loyalties to country.

Working folk are usually simple folk. Hence they have confidence in men who are forthright and straight-dealing, and distrust those who scheme and equivocate. Their distaste of two-facedness is the more bitter when found in someone outside their ranks, but it is not spared even when those who previously enjoyed their confidence prove disappointing.

Labor did not have confidence in Mr. Chamberlain, for it considered him out of touch and out of tune, not only with world forces, but with the simple social things of which it knows so much. Mr. Bevin, on the other hand, represents everything it stands for—simplicity, forthrightness, sensitiveness to suffering, and aspiration. Mr. Churchill has many of the same characteristics, for he is blunt, hard-hitting, and hard-working.

Simple folk are greatly influenced by people, by their size-up of an individual, whether he be labor leader, capitalist, or king. Is he a real fellow? Can you trust him? Is he a hard worker? Does he have a fellow feeling? Workers admire the qualities of a man such as William Knudsen, business executive though he is; likewise, business men who have known him almost always admire John L. Lewis, because he has the same abilities as business' most successful leaders. The point is important: a common basis of understanding is the human one; straightforwardness and sympathetic understanding have a universal appeal. They are the basis of accord. When, therefore, organized business deals with organized labor or government deals with either or both, the spokesmen should be chosen with a view to their straightforwardness and the confidence they inspire. For confidence is the *sine qua non* in the path of progress and unity.

Nothing does more harm to capitalism than dishonest entrepreneurs, for they cause a loss of confidence. Workers do not inevitably envy or dislike the captains of industry; it is only when

these become too sleek and rich that people suspect that they may be too sharp or that the system may be wrong. When anyone in his conceit "loses touch," he inevitably sacrifices the confidence of the common man. And so it is in labor circles. The leader with the common touch is the one who wears.

A new order of labor leadership has developed in recent years, a type that inspires confidence in future accords. In the United States, it is most pronounced in the group of leaders who are at the second level of authority, the lieutenants in the labor movement. In the major labor organizations of this country are men who have the virility and native intelligence of the labor leaders of old, but over and above these basic considerations they have broad viewpoints and abilities to manage responsible concerns. In knowledge and sophistication they are a match for the most promising junior executives in the nation's business. The importance of this new crop is substantial, because it portends not only more skilled labor leadership but also greater mutual confidence on the part of labor and management.

Labor produces executive ability just as management produces it. And the examples of Bevin, Morrison, and other labor leaders administering the most important sectors of the national economy in Great Britain serve finally to scotch the impression that labor leaders somehow lack the talents and insights which make men capable of directing the complicated teamwork of their fellows.

After the organizing stage comes the administering period, during which the institution settles down for the long pull. For this, a different type of talent and temperament is needed than in the formative stage, characterized by struggle and rough-and-ready methods. The administrator relies rather upon planning, system, and teamwork.

Labor in this country is now passing from the organizing to the administering period. If and when collective bargaining is accepted understandingly by the main body of the nation's business leaders, organized labor will tend to lose its fighting characteristics. Realizing that it has arrived, it will willingly assume responsibilities toward the social order which it now looks upon with suspicion, seeing in them curbs to its liberty and influence. As the militant stage fades into the past, a new type of leadership will reflect the change in atmosphere and condition.

Business men who criticize some labor leaders for unreasonable-

ness and irresponsibility have much justice on their side. After a long period of fighting for recognition, it is inevitable that in some cases union leaders should be more troublesome than constructive. Most people strut a bit in the first flush of victory, but society can afford to be tolerant. If such behavior should continue, of course, to the extent of seriously impairing the nation's productive effort, public opinion would not be long in asserting itself. For the most part, however, organized labor does not wish to interfere with the unity of managerial direction—it merely wants representation, as the American colonists did of old. It wants to be consulted in those areas—wages, hours, conditions of work—where it has a right to be heard; it wants to advise and be instructed in order that everyone may perform his rôle more understandingly. Arrogance and irresponsibility are likely to crop out in all walks of life, and labor leaders are no exception. Give them the basic rights organized labor has long struggled for, however, and most of them will prove as constructive and responsible as the managers of business concerns.

In the shaping of social destiny, no factor is more important than the competence of those who lead. Competence, responsibility, and confidence are the links in a natural sequence. Can we produce leaders of industry and of labor who can inspire confidence on both sides? To the extent that we do, our domestic scene is likely to prosper. And to that extent, likewise, is labor likely to play a significant part in bringing the world back to a lasting peace.

#### IV

If the democracies win, what are the main outlines of the new social order which labor will recommend? It is impossible to deal with this question with blue-print finality because there are as many viewpoints and variations in labor union circles as in almost any other group.<sup>6</sup> Nevertheless, something can be learned by a glance at the politico-economic program of British labor, for it is more advanced than ours, and the British, at war, are more concerned than we Americans about winning the peace.

Labor contends that only production for maximum output can

<sup>6</sup> Cf. Arthur Greenwood, *op. cit.*; also Herbert Morrison, *Socialization and Transport* (London, 1933); *Britain's Industrial Future* (London: British Labour Party, 1928); Harold J. Laski, *Where Do We Go from Here; A Proclamation of British Democracy* (New York, 1940); Clement R. Attlee, *War Comes to Britain* (London, 1940); *Labour's Peace Aims* (London: British Labour Party, 1940); Sir Stafford Cripps, *Democracy Up to Date* (New York, 1940).

win the war and that this organization is socialist. "Put bluntly," says Arthur Greenwood, "the truth is that in these days only Socialist organization can meet dictatorship organization."<sup>7</sup> When democracy fights totalitarianism, he believes, there is needed an economic organization as definite in its purpose, as swift in decision, and more effective in operation than anything that dictatorship can produce.<sup>8</sup> Labor will bear any necessary sacrifices, but all segments of the population must share equally. Labor will restrict its liberties for the sake of survival, but it wants assurance that those it trusts will be at the helm.

After the war, labor makes it clear, there can be no return to former planlessness. Indeed, the structure of British industry already approximates socialist lines.<sup>9</sup> In 1919, four-fifths of the principal industries of the United Kingdom were under the control of syndicates and combines, and since then trustification has advanced even farther.<sup>10</sup> "Thus monopolistic power is wielded by the few. No self-respecting democracy can tolerate such a situation." Labor therefore advocates that the great industries—finance, land, transport, and coal and power—be transferred to public control, and in their management and products the workers demand a greater part. Effective coöperation between management and labor, it is believed, subject to a broad state plan, is essentially economic efficiency.

One of the encouraging aspects of analyses such as Greenwood's is the degree of insight into the practical and subtle aspects of management which they reveal. These leaders have learned that socialism will not prevail until it demonstrates its practical workability. Hence, Britain's labor leaders favor time-tested management methods and suspect visionary dreaming and bureaucratic bungling. It was a national labor government which first advocated the use of the corporation, that chief symbol of the business man, as an instrument for the socialization of certain industries. Since then a major part of the British economy (electricity, broadcasting, and transport notably) has been transferred to the device of the public corporation, a public-private form of organization with limited profit-making but freedom of management.<sup>11</sup>

<sup>7</sup> Arthur Greenwood, p. 191.      <sup>8</sup> *Ibid.*, p. 191.

<sup>9</sup> *Ibid.*, p. 191 ff.      <sup>10</sup> *Ibid.*, p. 200.

<sup>11</sup> See Marshall E. Dimock, *British Public Utilities and National Development* (London, 1933); Herbert Morrison, *Socialization and Transport* (London, 1933); Lincoln Gordon, *The Public Corporation in Great Britain* (London, 1938); John



Labor is keenly aware of the dangers of deadening uniformity and the imperishable value of initiative. Referring to the mistake that critics formerly made in confusing bureaucratic methods with socialism, Greenwood remarks that "what the Labour party desires least of all is officialdom and bumbledom." Reorganization of the economic structure along the lines of public ownership and control, he continues, should not be based upon any cut-and-dried formula, to be applied to all industries alike. The Labor movement is as concerned as anyone that the measures adopted shall be capable of achieving the end in view with a minimum of dislocation, and of functioning with a maximum of efficiency when in operation.<sup>12</sup>

Labor's plan of world order begins with the premise that the greatest contribution Britain can make to world good is on the basis of her own example. National goals are international goals. Labor desires social and economic justice for the common people, who must have larger opportunities. There must be flexibility and individuality, in nations and people. We must not, says Greenwood, "seek a 'tidy' world, goose-stepping its way to 'progress'."

Labor in the British Commonwealth, we are told, has no imperial aims, "will not lend itself to such aims." It will not degrade itself into a scramble for world markets. The issue is a moral one: the retention of spiritual values, of achievements which have increased human freedom, and the essential conditions of civilized life.

Labor believes that all the nations of the world should be invited to the peace conference, to discuss the whole range of human problems. Like liberty, peace is indivisible. War has destroyed freedom in the subjugated countries, and even in the democracies huge expenditures for armaments have reduced social services and postponed long overdue reforms. Resources have been dissipated. Thus, obviously, peace is a universal need and all should be invited to consider it.

Peace must assure for all time that no nation shall menace another by force of arms. Thus all nations must agree to stand together against any military attack made upon one of them. This can only be done, thinks Greenwood, through an international armed force to which all shall contribute.

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Thurston, *Government Proprietary Corporations* (Cambridge, Mass., 1937); Terence O'Brien, *British Experiments in Public Ownership and Control* (London, 1937).

<sup>12</sup> Arthur Greenwood, *op. cit.*, p. 202.

Disarmament will be a major subject of discussion and must involve the transfer of power to take action against an aggressor to an international authority. This means a sacrifice of sovereignty by states, according to Greenwood, resulting in force ceasing to be an instrument of national policy and frontiers no longer determined by strategical considerations. State boundaries will be demarcated by racial, religious, cultural, and ancient historical associations.

A new league of nations must be established, wherein nations will coöperate to rule the major destinies of mankind on democratic lines.<sup>13</sup> It would control the internationalized police force, but would work to make that force unnecessary. Within this worldwide confederation of nations would be federal unions, "close and more intimate friendships which will help to cement the larger comradeship of mankind." The New World, the Balkans, the Scandinavian peoples are such groups. There may also be sub-federations, if necessary, for there is need for economic federation to widen the bounds of production and distribution.<sup>14</sup>

One of the most interesting features of British labor's international plan is its fundamental consistency with the program for England's domestic economy. At all times, that degree of government control requisite for stability and widespread well-being; as much freedom and individuality as possible within the larger framework; the predominance of spiritual values, liberty, and human worth. These are the ruling considerations dictating both plans.

And business men—will they be more afraid of these frankly announced plans than of defeat at the hands of the enemy? That hardly seems likely. British labor has been tested in the heat of battle, has become more practical as a consequence of running the affairs of state on several past occasions, has learned to appreciate the indispensability of managerial talent, and has recruited much of it into its own ranks, especially through the engineering unions. It is sober and responsible. British business executives have come to respect its leadership and acumen. It is all summed up in a word—confidence. It is quite likely, therefore, that if Great Britain survives the war there may be a transition to moderate socialism, in which no blood will be spilled and unity will be assured, because of the mutual confidence and respect which all elements of the population have in their respective leaders.

<sup>13</sup> Arthur Greenwood, *op. cit.*, p. 216.

<sup>14</sup> *Ibid.*, p. 217.

# DEMOCRATIC PLANNING IN AGRICULTURE, I<sup>1</sup>

JOHN D. LEWIS

*Oberlin College*

## I. BACKGROUND AND OBJECTIVES OF THE COUNTY LAND USE PLANNING PROGRAM

Planning has always been regarded as a matter for the experts. Laymen affected by the plans have usually participated in the process only by accepting or rejecting through their representatives planning projects drawn up by technicians. The necessary importance of the rôle of technicians and the inevitable conflict between technical considerations, which must determine the recommendations of the experts, and political considerations, which must determine the attitude of representatives, have led many to regard the whole idea of systematic planning (in any large field of production) as undemocratic in its general trend. The whole idea of planning, they insist, points necessarily toward bureaucratic centralization of responsibility. The significance of the recently launched County Land Use Planning program lies in the effort to achieve from the first stages of the process and at the most local levels of organization that fusion between the skill and experience of the expert and the political choices of laymen which is the essence of modern democracy. Decentralization and localization of planning is, of course, particularly essential in agriculture because of the need to adapt methods for attaining general objectives to widely varying sectional differences. At the same time, lay participation in agricultural planning can mean widespread participation because of the wide spread of individual responsibility for individual farm enterprises. It may well be, therefore, that the lessons to be learned from this experiment in democratic planning for agriculture are not readily transferable to other fields of productive enterprise. That is a question that I must leave to others.

On July 8, 1938, the Department of Agriculture and the Association of Land Grant Colleges and Universities approved the Mt. Weather Agreement as a joint statement of the general objectives of land use planning and the general procedures to be followed in

<sup>1</sup> This article is based primarily upon a study made during the period January, 1940, through May, 1940. The writer is greatly indebted to the Social Science Research Council, whose award of a post-doctoral fellowship for the academic year 1939-40 made the study possible.

such planning.<sup>2</sup> This Agreement promises to carry to a new level the record for inter-governmental coöperation already well established by the Department of Agriculture and the Land Grant Colleges, acting as agents of the states. It is already providing the student of government with one more practical experiment in that type of coöperative federalism in administration which has become increasingly important in recent years.<sup>3</sup>

The Mt. Weather Agreement may be interpreted, in the first place, as a necessary adjustment by the Department of Agriculture to the new responsibilities placed upon it by legislation since 1933.<sup>4</sup> The sudden expansion of direct administrative responsibilities assigned to enlarged or newly-created action agencies in the Department had produced an urgent necessity to correlate the work of each agency with that of other agencies—in the Department, in other departments, and in state governments—engaged in closely related work. "The problems of erosion, of tenancy, prices, farm income, flood control, submarginal lands, crop insurance, rehabilitation, all impinge on one another," said former Secretary Wallace. "Action programs cannot deal with one segment out of relation to the other parts of the whole program. Out on the watershed and on the farm, where our real job lies, we are dealing with a complex

<sup>2</sup> "Joint Statement by the Association of Land Grant Colleges and Universities and the United States Department of Agriculture on Building Agricultural Land Use Programs," July 8, 1938; reproduced in J. M. Gaus and L. O. Wolcott, *Public Administration and the Department of Agriculture* (Chicago, 1940), pp. 463-465, and discussed briefly on pp. 157-159.

<sup>3</sup> This point appears frequently in explanations of the County Land Use Planning program by members of the Department. See, e.g., Bushrod W. Allin, "The County Planning Project—A Coöperative Approach to Agricultural Planning," address, Annual Meeting, American Farm Economic Association, Philadelphia, Dec. 28, 1939 (mimeo., U.S.D.A., B.A.E.). Carleton R. Ball gives a detailed description of various types of coöperative relationships in *Federal, State, and Local Administrative Relationships in Agriculture* (2 vols., Berkeley, 1938).

<sup>4</sup> The broad scope of this new legislation is indicated by a mere enumeration of the basic acts which had been added to existent agricultural legislation by 1938. New legislation included the Soil Conservation and Domestic Allotment Act of 1936, the Sugar Act of 1937, the Agricultural Adjustment Act of 1938, the Federal Crop Insurance Act of 1938, the Marketing Agreements Act of 1937, the Surplus Commodities Acts of 1937 and 1938, the Bankhead-Jones Farm Tenant Act of 1937, the Soil Conservation Act of 1935, the Flood Control Acts of 1936, 1937, and 1938, the Farm Forestry Act of 1937, the Pope-Jones Act of 1937 dealing with a water facilities program, and the Bankhead-Jones Act of 1938, which enlarged the program of agricultural research. U.S.D.A., "Memorandum for Chiefs of Bureaus and Offices," Oct. 6, 1938 (mimeo.); reproduced in Gaus and Wolcott, pp. 466-475.

of interrelated factors.”<sup>5</sup> But, in spite of “the essential unity of the farm problem,” conflicting efforts can develop readily when, for example, one agency is primarily responsible for a program of crop control to raise prices and another for a program of erosion control, or where in the same area one agency is working to reduce the danger of floods, another to resettle submarginal-land farmers on better land, and a third to protect and develop forest land. Hence, as the scope of Departmental controls and services was expanded, the problems involved in adapting national policies to local conditions in thousands of farm communities and the need for systematic coördination of efforts could not safely be ignored.

But such particularization and correlation might have been sought through various methods. The significant feature of the Mt. Weather Agreement was that it carried forward a remarkable experiment in *democratic* planning. The first part of the Agreement states:

The Department feels the need for reasonably uniform procedures whereby farmers may take responsibility for the development of sound land-use programs and policies for the dual purpose of (a) correlating current action programs to achieve stability of farm income and farm resources, and (b) helping determine and guide the longer-time public efforts toward these ends.

In order to function effectively and democratically in the national field, these procedures must provide for analysis, planning, and program-building beginning in the communities and extending then to county, state, and national levels.<sup>6</sup>

This emphasis is not new. Since the inauguration of the A.A.A. program, the Department has consistently attempted to base its more important action programs as much as possible on active farmer participation and farmer consent. Particularly since 1935, the Department has emphasized the importance of using the practical experience and local knowledge of farmers in both planning and administering agricultural programs.<sup>7</sup> The present planning

<sup>5</sup> *Ibid.*, p. 3; Gaus and Wolcott, p. 469.

<sup>6</sup> Elsewhere the general objective of the County Land Use Planning program is stated thus: “to provide for the fusion of farmer, technical, and administrative views throughout the process of program and policy creation, beginning with the local community. . . . Such plans and policies are designed to secure the coördination and correlation of public and group action at community, county, state, and national bases, and for the translation of appropriate conclusions on desirable agricultural adjustments into specific plans and programs for local, state, and departmental action agencies.” U.S.D.A., *Report of the Chief of the Bureau of Agricultural Economics*, 1939, p. 3.

<sup>7</sup> Cf. Dale Clark, “The Farmer as Co-Administrator,” *Public Opinion Quarterly*, July, 1939.

program attempts through a novel type of machinery to bring farmers into more frequent and direct contact with agricultural specialists and administrators, and at the same time to bring the specialists into more frequent and direct contact with farmer experience and local practices, opinions, and traditions. As former Secretary Wallace has said, "farmers need the help that specialists can provide, and specialists must draw on the experience and judgment of farmers. The need therefore is to provide for integrating and unifying the planning of both groups as a guide to all public agricultural programs."<sup>8</sup>

## II. MACHINERY AND PROCEDURE

On the basis of the Mt. Weather Agreement and subsequent agreements between the Department and the several State Extension Services, machinery for County Land Use Planning is set up as follows:<sup>9</sup>

(1) *At the county level, a County Land Use Planning Committee* is to be set up in each agricultural county in the country. These committees are being organized by the Extension Service of each state, with the County Agricultural Agent usually acting as secretary of the committee. It is suggested in the Agreement that each committee should consist of ten or more farm men and women and those state or federal officials in the county who are responsible for the administration of land use programs. Farmer membership is to constitute "a substantial majority" and a farmer is to be chairman of the committee. *Community committees* consisting of "representative farm men and women" are to be formed to assist the county committee.

<sup>8</sup> "Memorandum for Chiefs of Bureaus and Offices," Oct. 6, 1938, pp. 3-4; Gaus and Wolcott, p. 469. "If sound democratic policy is to be made, it must be initiated in local discussions participated in by leaders of farm, industrial, labor, and professional groups in their home towns. Where such discussion takes place, the give-and-take, the bargain, the compromise that is the characteristic mark of democracy is continually going on in local arguments, local conversations. The process of moderation is continually minimizing what appear to be irreconcilable differences in interest." M. L. Wilson, *Democracy Has Roots* (New York, 1939), p. 114. The interpretation of democracy in action which this provocative little book suggests is in general the interpretation on which the Land Use Planning program was based.

<sup>9</sup> This description is summarized from the following documents: the Mt. Weather Agreement; U.S.D.A., "County Land Use Planning Work Outline Number 1," Jan., 1939 (mimeo.); U.S.D.A., "Memorandum for Chiefs of Bureaus and Offices," Oct. 6, 1938; U.S.D.A., Form for a "Memorandum of Understanding between the Bureau of Agricultural Economics, U. S. Department of Agriculture, and [the Agricultural Extension Service and Experiment Station of a particular state]," Feb. 18, 1939 (mimeo.); U.S.D.A., "Memorandum of Understanding" between the Bureau of Agricultural Economics and "the Operating Agencies of the Department of Agriculture," March 11, 1939 (mimeo.); U.S.D.A., *Report of the Chief of the Bureau of Agricultural Economics*, 1939, pp. 1-5.

(2) *At the state level*, a *Project Leader* is appointed by the State Director of Extension to organize the planning project through the Extension staff. A *State Representative of the Bureau of Agricultural Economics* is designated to work with representatives of the Extension Service and the Experiment Station "in coördinating and stimulating planning activities among the several counties of the state." The Project Leader is administratively responsible to the Director of the Extension Service; the B.A.E. Representative is appointed only if he is acceptable to the Land Grant College, but is responsible to the B.A.E. The Project Leader, the B.A.E. Representative, and a representative of the State Experiment Station staff, designated by the Director of the Station, constitute a joint *Land Grant College-B.A.E. Committee*, which is responsible for developing the detailed procedure for the planning program and for encouraging related research work. Above this joint committee stands a *State Agricultural Land Use Program Committee* entrusted with general responsibility for the land use programs operating in the state. This state committee consists of "at least one representative farmer or farm woman from each major type-of-farming area in the State, the Director of the State Experiment Station, State Representatives of the B.A.E., the A.A.A., the S.C.S., the F.S.A., and such other State and Department officials as may have responsibility for the management of land use programs in the State." The Extension Director is chairman of the committee, and the B.A.E. Representative acts as secretary.

(3) *At the national level*. In a memorandum of October 6, 1938, former Secretary Wallace announced an important reorganization of the Department which was designed to facilitate the carrying out of the Department's responsibility in the Land Use Planning program. The *Bureau of Agricultural Economics* was designated as "a general agricultural program planning and economic research service for the Secretary and for the Department as a whole," and to it were transferred the planning staffs that had been attached to the action agencies in the Department. Within the Bureau, the new *Division of State and Local Planning* was given the tasks of formulating general procedures for carrying out the planning program and of reviewing and analyzing reports from local planning committees. This Division has a small administrative staff in Washington, and operates in the field through seven *Regional Representatives of the Bureau* and the State Representatives already noted above. To facilitate coöperation between the B.A.E. and the action agencies of the Department, an *Interbureau Coördinating Committee* was established. This committee is composed of representatives designated by the several action agencies to serve as liaison representatives between the respective agencies and the B.A.E., representatives of the Extension Service Office and the Solicitor's Office, the Land Use Coördinator, and the heads of the Divisions of the B.A.E. It meets under the chairmanship of the Chief of the B.A.E. The findings of this committee or of its subcommittees go to the Secretary by way of the *Agricultural Program Board* of the Department, a board composed of the heads of all Departmental agencies concerned with land use problems.<sup>10</sup>

<sup>10</sup> The heads of the following agencies are included: Office of Land Use Coördination, B.A.E., Extension Service, A.A.A., F.S.A., S.C.S., Forestry Service, Agricultural Marketing Service, F.C.A., R.E.A., and Commodity Credit Corporation. The Under Secretary, Assistant Secretary, First and Second Assistants to the Secretary,

That the work of the planning committees might be focussed on problems of national as well as local land use policies, and that reports from different sections might be comparable, the Department of Agriculture worked out planning procedures for county committees. The procedure developed for the first stage of planning has been designed to secure an analysis of the county sufficiently detailed to indicate the land resources of the county, the present utilization of these resources, the principal land use and human problems, and the sort of adjustments needed to deal with these problems. Although the emphasis of "Work Outline Number 1"<sup>11</sup> is upon the mapping and description of physical features of land areas and the problems of adapting land use to physical features, the attention of planning committees is directed also to the social institutions that serve the communities and the county and to such problems as those connected with tenancy or the relation of agriculture to other economic enterprises in the county. It is intended that this first phase of planning should lay the foundation for working out long-time plans, indicating both immediate and long-term land use adjustment goals for each local area. The county committee consolidates area maps drawn by community committees into a county map and organizes into a single report the descriptive material and any recommendations that may have come from the communities. From the county this report goes to the state committee, which may approve it or send it back to the county committee for corrections. After approval by the state committee, copies of the report are sent to the Department of Agriculture Extension Division and to the Division of State and Local Planning for analysis and suggestions regarding further local action.

Having completed an "intensive" report, the County Planning Committee is normally expected to move on to the "unified" phase of planning.<sup>12</sup> The object of planning at this stage is to trans-

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Director of Research, Solicitor, Director of Budget and Finance, and Director of Personnel are also members. Since the creation of the Program Board, the Secretary of Agriculture has almost invariably attended its meetings.

<sup>11</sup> U.S.D.A., "County Land Use Planning Work Outline Number 1."

<sup>12</sup> Three stages of planning work are designated. The first, "preparatory," is "designed to acquaint county agents and local planning committees with the scope and objectives of land use planning." The second stage, "intensive" planning work, involves the mapping and classification of land areas in the county and the formulation of long-time plans and immediate recommendations for land use. In the "unified" stage, efforts are made to translate plans into action. U.S.D.A., *Report of the Chief of the Bureau of Agricultural Economics*, 1939, p. 4.



form recommendations for adjustment into a unified program of action. The program may take the form of integrated proposals for specific action on the part of agricultural action agencies, other public agencies, or individual operators. It may call for modification of national, state, or local policies to fit the discovered special needs of the county. In any case, the competence of the County Planning Committee is, of course, only advisory. Its specific recommendations must be implemented by the agreement of agricultural agencies, other public agencies, or individuals, to execute them. In counties where the program is operating successfully, therefore, much of the unified report will deal with specific commitments for action.<sup>13</sup>

The unified program report is also submitted to the State Land Use Planning Committee for approval. When approved by the state committee, it is forwarded through the Federal Division of Extension to the Chief of the B.A.E. for submission to the Interbureau Committee. The Inter-Bureau Committee, acting on the basis of a detailed analysis made by the Division of State and Local Planning, may refer suggested changes or amendments dealing with Department policy back to the state committee for reconsideration by the state and county committees. When agreement has been reached in the committees and the farmers of the county have given their general approval, the proposed program is presented through the Agricultural Program Board to the Secretary for his approval.<sup>14</sup>

<sup>13</sup> The following description of procedure in Teton county, Mont., gives a concrete illustration of the procedure at this stage:

"After the intensive county report containing these recommendations was finished in July, 1939, the county committee sent copies to the state land use planning committee, and to the federal and state agencies interested in land use programs in the county. Each agency was asked to look the report over, and to prepare a statement giving its opinion on the recommendations, and suggesting methods, if possible, by which it might carry out specific recommendations.

"Then the county committee, working closely with the representatives of the agencies of the Department of Agriculture, further analyzed the recommendations, and agreed on the general direction the changes should take. At the same time, the subcommittees on special problems, aided by technicians of the state college and the Department of Agriculture, were studying in detail the problems of the county and possible recommendations.

"The first unified agricultural program report for Teton county was prepared in January, 1940. It told of the aims of the planning committees, the problems they are trying to solve, and the proposed solutions. Special attention was given to the ways farmers and local, state, and federal agencies can work together toward these solutions." U.S.D.A., *Land Use Planning Under Way*, July, 1940, pp. 21-22.

<sup>14</sup> This procedure is described in U.S.D.A., "Memorandum for the Secretary Re:

Thus integration of county programs on the state level is to be achieved primarily through the continuous coöperation with county committees of the Project Leader and the State B.A.E. Representative, and the formal responsibility for an integrated state program rests with the state committee. The Division of State and Local Planning reviews and assists county planning and attempts to integrate the process on the national level. When action through a national office is called for, the Interbureau Coördinating Committee comes into operation as the link between the B.A.E. and the action agencies. The Agricultural Program Board, at the apex of the pyramid of committees, plays a less continuous rôle in the process and has a more formal, if more authoritative, review function.

By the beginning of 1940—twelve months after the Land Use Planning program was initiated—memoranda of understanding between the B.A.E. and State Agricultural Extension Services and Experiment Stations particularizing the principles of the Mt. Weather Agreement had been signed in forty-five states. These forty-five states, with the exception of Tennessee and Kentucky, had set up State Land Use Planning Committees. Although no agreement had been signed for Illinois, California, or Pennsylvania, Land Use Planning programs were under way in Illinois and California. A joint Land Grant College-B.A.E. Committee had also been established in each coöperating state. At the beginning of 1940, some type of Land Use Planning work was reported for 1,120 counties; "intensive" planning work had been carried on in 566 counties; and a "unified" program had been undertaken in at least one county in each of forty-one states.<sup>15</sup> The Division of State and Local Planning estimated that approximately 19,000 farmers were serving on county committees, and that nearly 51,000 farmers had served on 6,807 community committees in the course of the year.<sup>16</sup> These figures are probably too high to serve as an accurate indication of active participation, since serving on a committee

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Procedure for Developing a Unified County (or Area) Program," Feb. 2, 1939 U.S.D.A. (mimeo.).

<sup>15</sup> U.S.D.A., B.A.E., and Extension Service, "Report on the Progress of Land-Use Planning During 1939," Jan. 31, 1940 (mimeo.), pp. 7, 14. In all, 1,195 counties had been selected for planning during 1939-40, and of these 765 had been designated as "intensive" planning counties. *Ibid.*, p. 12.

<sup>16</sup> *Ibid.*, p. 7; U.S.D.A., *Land Use Planning Under Way*, p. 10.

could mean in some cases simply designation to serve or attendance at a single meeting.

A year of encouraging progress on a trial and error basis has revealed a number of problems that should be of interest to political scientists as well as to agriculturalists and economists. The balance of this paper deals with four of the major organizational problems connected with the planning program.<sup>17</sup>

### III. THE PROBLEM OF AREAS

From the beginning, the county was assumed to be the proper basic local unit for Land Use Planning, just as it had been assumed to be the proper local unit for A.A.A. administration and for the A.A.A. planning committees set up in 1935. For this choice there seems to be ample justification. Outside New England, the county has been the focus of rural political life for many generations, and consequently not only has acquired a system of institutions such as its officers, its court-house, its county fair, and its bonded debt, but also has become a comprehensible entity readily accepted and perhaps even loyally supported by a local patriotism. Tradition has made the county the natural local unit for the purpose. But aside from this, the fact that state extension work has been organized for years on a county basis would probably have been decisive. The county agricultural agents have always been *county* agents, and it is upon them that much of the obligation for Land Use Planning assumed by the Extension Services must fall.

But the question that was not answered so easily was that of the proper basis for subdividing the county. There seems to be general agreement among those responsible for the Land Use Planning program that the way to get genuine farmer participation is by beginning the work through local community meetings,<sup>18</sup> and this view seems to be borne out by the fact that in a number of counties in which the most outstanding work has been done organization was begun on a community basis and the work carried on with active and continuous community participation. "Work Outline

<sup>17</sup> Most of the factual material reported here was collected during the first five months of 1940.

<sup>18</sup> The Mt. Weather Agreement speaks of "community and neighborhood planning committees" which should "form the cornerstone of the whole planning organization," and in the first work outline prepared in the Department as a guide to county committees there is further emphasis upon the importance of having preliminary mapping and classification done on a community basis.

Number 1" suggests that existent community boundaries might be used, such as those of minor civil divisions, or those established for extension work, for A.A.A., for a drainage district, etc. One result of the effort to find workable units for community participation in the program has been to reveal once more well-known organizational weaknesses at the primary level of rural local government. Frequently local political units are found to be too large, too small, or without significance as real centers of community activities.

Where the town or township remains an important political unit, town or township boundaries are usually taken as community boundaries. This is true, of course, in the New England states and in the tier of mid-western and northwestern states where the transplanted township took root and survived. But there are sections, notably in the South, where minor civil districts have none of the importance traditionally attributed to the New England town and the mid-western township. In addition, the size of the units frequently discourages any attempt to develop a new community consciousness as part of the planning process. In Mississippi, for example, the supervisors' beats, always five in number whatever the size of the county, are often found to be too large for effective community organization. On the other hand, supervisors' beats in Alabama and militia districts in Georgia seem far too numerous to serve as community units. Of course, the maximum size of a workable community varies greatly with different sections of the country. The fact that a meeting is held ten miles away may be sufficient to discourage the attendance of a not too prosperous cotton tenant, while the same distance may appear trivial to a farmer of the western range. The B.A.E. Representative of Montana reports that in one county, served by a single community center, people regularly travel from fifty to seventy miles to meetings.

Where effective local units do not exist, successful administration of the Land Use Planning program seems to require that substitute units be created—or, more accurately, discovered. This suggests that the present tendency toward the dissolution or absorption of local rural units of government may have some disadvantages which are not generally recognized. Where substitute units have been used during the first year of planning organization, there has been a tendency to try to trace community boundaries on the basis of geographic divisions or of type-of-farming areas. But too often it appears that the boundaries of existent but legally unacknowl-

edged communities do not correspond with the boundaries are determined "naturally" by geography or types of farming. A good county agent has usually discovered this for his own county and before he has worked long in the county has discovered where the accepted meeting centers are and how far the attraction of these centers extends. Extension Service districts, communities, or meeting centers are, then, one substitute for the more formal town or community structure. The unit in such cases is a rough and ready sort of sociological community. But such units are not always an adequate basis for a program of democratic planning, because they do not always reach into all corners of the county and bring all groups into participation. This consideration has led to a renewed interest in the scientific determination of sociological neighborhood and community areas. In one state (Virginia), the Extension Service has, with the assistance of a sociologist, been setting up Extension Advisory Committees on a sociological community basis. This work of delineating such communities has been under way for several years, and about one third of the counties of the state are now organized on a community basis. But such painstaking and systematic delineation of communities has been exceptional in the past. Recently, the B.A.E. Division of Farm Population and Rural Welfare has conducted sociological surveys of about one hundred selected counties, for the purpose of mapping existent communities and neighborhoods on the basis of such factors as trading-centers, roads, schools, churches, nationality groupings, etc.<sup>19</sup>

It would obviously be impossible to make a very extensive survey in each of some three thousand counties, but the Division of Farm Population and Rural Welfare believes that its methods and techniques have now been simplified to the point where one person can lay out the neighborhood and community areas as a basis for planning organization in a county in a week or ten days. Because of its simplified procedure, it is also possible for the Division of Farm Population and Rural Welfare to train people without special

<sup>19</sup> The distribution of completed community surveys in December, 1940, is as follows: Virginia, about 25 counties; Arkansas, 17 counties; North Carolina, South Carolina, Alabama, about 15 counties each; Maryland, Tennessee, Florida, Mississippi, Oklahoma, New Mexico, Kansas, Illinois, Nebraska, South Dakota, North Dakota, Colorado, from 1 to 3 counties each. These figures are taken from a memorandum prepared by Dr. Douglas Ensminger, of the Division of Farm Population and Rural Welfare, and released to the writer by Dr. Frank Cronin, acting head of the Division (Dec. 31, 1940).

sociological training for this work, and the work is, in fact, now being carried on by personnel of the Division of State and Local Planning trained by sociologists from the Division of Farm Population and Rural Welfare. Planning leaders in a number of southern states, particularly North Carolina and Maryland, are convinced that such a survey should be made in each county before organization of that county is begun. In general, the interest in this procedure has been confined thus far to the southern states, but there would seem to be no reason why the procedure should not be useful in those western states where townships are either non-existent or unimportant as community units.<sup>20</sup>

In some counties, one important result of sociological community surveys has been to mark out more clearly areas in which the farm population does not ordinarily enjoy the privilege of direct representation in county representative bodies—areas which do not, therefore, ordinarily participate in managing the affairs of the county. In numerous states there is some attempt to make Land Use Planning more democratic than the prevailing tradition sanctions by drawing such groups into some degree of participation in Land Use Planning. To many planning organizers, honestly interested in making Land Use Planning organization democratic, this is the principal advantage of sociological community and neighborhood surveys.

But for the student of government this attempt to create new units for democratic discussion and policy planning has broader significance. In the past, innumerable government units, such as park boards, drainage districts, etc., have been established on the basis of the area affected by a particular problem or function. And in recent years a great deal of effort has gone into the elaboration of projects for consolidating local government units for the sake of more efficient administration. The thinking of professional planners in America has pointed in the same direction. Looking steadily at specific problems and the proposals suggested by technicians for their solution, they have tended to concentrate upon the enlargement of the areas for which the planning is to be done. But the County Land Use Planning program involves an attempt to find

<sup>20</sup> Dr. Ensminger believes that planning work would be facilitated, even in the northeastern and mid-western states, if the basis of organization were the social community instead of the town or township, since community boundaries do not always correspond to the boundaries of a town or township.

small town-meeting units which can be delimited, not in terms of a particular function, but in terms of the natural social cohesion of the citizen group included and its ability to work effectively as a unit. It is an attempt to elevate social units, which may be unconscious or only half-conscious of their own unity, into active semi-political units with a broad general advisory competence. While most local government reformers have looked toward administrative efficiency as their goal, and while most planners have looked at areas in terms of specific planning problems, land use planners engaged in this program have looked first at the problem of democratic participation in planning, and consequently have had to discover local communities within the county where none seemed to exist.<sup>21</sup> To the extent that County Land Use Planning leads to practical results and thus becomes more thoroughly institutionalized, the program may well work toward the revitalizing of local rural responsibility, whether that responsibility be centered in a township or in some less traditional unit.

#### IV. SELECTION OF COUNTY AND COMMUNITY COMMITTEES

"Land use planning is a broadening of democracy in agriculture to make possible wider group action on farm problems," says a B.A.E.-Extension Service pamphlet.<sup>22</sup> "To make this effective, the views of farmers in each area must be presented by committees that actually represent farmers in the area." This pamphlet concludes: "The most democratic method possible is proving best for the selection of members on land use planning committees, and in every case it is expected that eventually all committees will be chosen by elective methods."<sup>23</sup> Thus the Washington offices principally responsible for the federal administration of the planning program appear to be agreed that democracy in planning must mean the active participation of the farmers through their freely elected representatives.

But out in the field one meets a bewildering variety of interpretations of democracy. And it must be admitted that, although field

<sup>21</sup> See the discussion of wider participation in urban planning by H. S. Buttenheim, "Planning Needs the Man in the Street," *National Municipal Review*, Vol. 28 (1939), 832 ff.

<sup>22</sup> U.S.D.A., B.A.E. and Extension Service, *County Planning Series*, No. 2, *Membership of Land Use Planning Committees* (April, 1940), p. 1.

<sup>23</sup> *Ibid.*, p. 7. Cf. also U.S.D.A., *Report of the Chief of the Bureau of Agricultural Economics*, 1939, p. 5.

representatives have tried to have the Department's interpretation of democratic organization translated into action, practice still lags behind theory. A study of organization in twenty-two states and about fifty counties in those states produced the following picture.<sup>24</sup> Election of committee members was the regular practice in five states.<sup>25</sup> Appointment was the regular practice in the others. Where appointment prevailed, the committees were usually selected, in fact if not in form, by the county agent, although he frequently shared the responsibility with the group of agricultural agency representatives in the county, with an Extension Advisory Board, or with the Farm Bureau Board. Of the seventeen states using appointed committees, four had experimented with election in some counties, and at least four regarded appointment as a temporary procedure and hoped to shift soon to election.

Where committees have been elected, the procedure has of necessity been simple and informal. In practically all cases, the elections have been held in open meetings, without written ballots or any of the other ordinary paraphernalia of elections. The procedure developed in North Dakota is one that has secured wide participation of farm people and that seems to have worked well in other respects. As illustrated by Ward county, it operated as follows. The program was explained to a group of about forty which included the members of an earlier A.A.A.-Extension Service planning committee and additional farmers selected by the county agent. This group, having agreed unanimously that the program should be adopted in Ward county, circulated information about it in the county and approved the division of the county into twelve community units. These communities were formed by grouping the fifty-seven townships of the county on the basis of types of land, topography, local trading and meeting centers, and the accessibility of meeting places. The farmers of each community were then invited by mail and radio to open community meetings. At these meetings the program was explained once more, and community committees of seven or eight members were elected. So far as the size of the committee permitted, each township in the community

<sup>24</sup> The states studied were Maryland, Virginia, North Carolina, Georgia, Alabama, Mississippi, Tennessee, Texas, New York, West Virginia, Ohio, Illinois, Wisconsin, Minnesota, North Dakota, Montana, Nebraska, Iowa, Kansas, Missouri, New Hampshire, Maine. Of these, the writer visited all but three for personal interviews with B.A.E. and Extension Service workers engaged in organizing the program.

<sup>25</sup> Texas, West Virginia, North Dakota, Montana, Kansas.



was represented on the community committee. Each community committee then selected its chairman and secretary, and the twelve community chairmen became members of a county committee, which included in addition some members of the former Program Planning Committee and representatives of the agricultural agencies operating in the county. The work of classifying and describing land areas and drawing up recommendations for land use was done by the community committees in a series of five or six meetings each, the county agent or an assistant county agent serving as secretary and consultant at these meetings. After the county committee had considered the findings of the community committees, they were taken back to the farm people for further discussion at a series of open community meetings before the first report was written. Over a thousand farm people participated to some degree in the first step of the planning process, and the county agent estimates that about one-third of the farmers in the county had some knowledge of the program.

A similar procedure is used in the neighboring state of Montana and in West Virginia. The B.A.E. Representative in Montana reports that attendance at open community meetings runs from twenty to sixty per cent of the farm operators. Roosevelt county, Montana, looking ahead to a permanent system of planning committees, has established three-year staggered terms of office for committeemen. Young and Kaufmann counties in Texas report election procedures similar to those used in North Dakota and Montana, and in these counties also large attendance is reported for open meetings.

Maryland is experimenting with a system of restricted elections. In Washington county, a county committee which had been appointed by the county agent in consultation with agency representatives nominated ten farm people for each of seven communities. Mail ballots were then sent to the farm people of the communities with instructions to vote for three men and two women. With each ballot was mailed a one-page explanation of the Land Use Planning program. Returns from various communities ran from twenty-five to forty per cent. The five elected from each community then served with two or more members of the county committee as a community committee, bringing the total membership of community committees up to from seven to ten. In some communities the whole committee, in others the chairman and secretary, were

then designated to represent the community on the county committee. The B.A.E. office in Maryland is now interested in developing a regular procedure through which the community would nominate as well as elect, and which would provide a specified term, perhaps two years, for community committeemen.

It is hard to find adequate general explanations for the particular distribution of the states that have adopted an elective system. North Dakota and Montana are northwestern states where, we are told, a spirit of frontier democracy and equalitarianism is still alive. But Wisconsin and Minnesota are also northwestern states with strong traditions of direct democracy, and the nationality background of their populations is similar to that of North Dakota; but in these states committees have usually been appointed. In West Virginia and North Dakota, well-supported farm organizations have given farmers experience in organized group action, but the same thing is true in mid-western states that have not used elections. In most cases, the explanation of the choice would seem to lie not so much in the background of the particular state as in the attitude of the planning leaders in that state—particularly Extension Service leaders, who are not subject to control by the Department of Agriculture and are often somewhat suspicious of its suggestions.

The pressure to "get things done" has tended to encourage appointment rather than election. The Division in Washington naturally expects its field agents to report results that will justify the high hope with which the program was launched, and the state office in turn pushes the county agents for progress reports with which to appease Washington administrators. Democratic procedure is notoriously slow procedure. Consequently the first thought of an overworked county agent, unless he is genuinely impressed by the importance of finding a truly democratic committee, will be to find a group of industrious and coöperative farmers who can be depended upon to work together harmoniously. With the best of intentions and with no thought of deliberately stacking the committee, he may set up a committee of "outstanding leaders" who have a sincere desire to act in the interest of the whole county, but who have only a second-hand knowledge and indirect concern about the problems of less successful farmers in the county. It is the writer's opinion that the program was pushed too vigorously from Washington during the first eighteen months of its operation.

The program was not an emergency program, but, it is hoped, a long-time program of permanent importance. In numerous cases, sounder county organization might have resulted from slower procedure and more effort to educate both the county agent and the farmers of the county in the purposes of the program.

In many cases, state and county organizers have begun with an appointed committee, on the principle that it is difficult, if not impossible, to arouse general interest in the program until the program is already under way and some prospect of concrete achievement comes into view. Elections held before such general interest has been aroused, they say, cannot be expected to result in genuinely representative committees. Even though the principle of elected committees be accepted, this may be an adequate reason for postponing elections in certain instances.

A number of common arguments for appointment rather than election seem to indicate an inadequate understanding of the basic objectives of County Land Use Planning as understood in Washington. Hard-working organizers out in the field sometimes explain that a planning committee must be made up of the good or intelligent leaders of the community or county. Such people, they say, can be carefully selected and appointed, but an election meeting cannot be trusted with the difficult job of finding them. It will restrict its choice to those who happen to attend the meeting. It will pass by a modest and competent man and elect a loudspeaker or a "politician." Such an argument would seem to pass over too readily the question of what a "good" representative should be good for, but it is none the less one of the strongest arguments for appointment.

Perhaps the most common reason for distrust of elections is the belief that appointment is more likely than election to secure committeemen whose views will be "objective" and not colored by personal interests. This belief goes naturally with the conviction that there can be found one program for the common welfare of the county that is ideally best for the county, and that it is the job of the county committee to discover this program. This type of thinking tends to ignore or conceal the facts that in any community as large as a county partially conflicting interests are bound to exist; that any program looking toward the common interest of the county must be built by discussion and compromise out of the conflicts of particular interests; and that the essence of planning is that

it is a *continuous* process, not a striving after the one permanent scheme.

But where the interests of different groups in a community are irreconcilable, democratic procedure would seem to be automatically excluded. In the greater part of nine or ten southern states, the determination to maintain white supremacy is obviously irreconcilable with any immediate realization of equal economic and political rights and opportunities for the Negro population. In the same areas, the aspirations of the poorest groups of farm workers, black or white, seem to be irreconcilable with the determination to maintain a traditional plantation system of production.<sup>26</sup> No realistic person will be surprised at the absence of elective committees in the southern states; more surprising is the fact that in a number of these states there has been some interest in and experimentation with elections.

"During 1939-40 . . . emphasis will be placed upon obtaining wider and truly democratic farmer participation [in county planning]." <sup>27</sup> Members of the field force, as well as members of the Washington office, are beginning to see clearly the necessary rôle of democratic elections in this sort of planning. This was indicated by frequent explanations that present methods of selection by appointment are temporary. For reasons suggested above, it may be difficult, if not impossible in some sections, to push democratic representation very far at present by the mere introduction of the machinery of elections. But the general tendency is certainly toward elections.

*[To be concluded in the next issue]*

<sup>26</sup> E.g., in Lee county, Ala., 65 per cent of the farmers are Negroes, 72 per cent are tenants, 53 per cent of the tenants are sharecroppers. There are, of course, no Negroes on the county committee; there are no croppers; there are "a few" tenants. Seventy-five per cent of land leases are merely verbal agreements, usually for one year. The committee's report contains very little on tenancy problems and no recommendations concerning leases. In Greene county, Ga., 52.5 per cent of the population are Negroes; 27.6 per cent of the farm operators are sharecroppers, and 73.7 per cent are tenants (including croppers). There are, of course, no Negroes on the county committee; there are no croppers; there are tenants who operate large units. The committee was of the opinion that about 20 per cent of the white tenants and 10 per cent of the colored were capable at present of operating farms as owners. The report did not explain the basis of these estimates. On the general background, cf. C. S. Johnson, E. R. Embree, and W. W. Alexander, *The Collapse of Cotton Tenancy* (Univ. of No. Carolina Press, 1935).

<sup>27</sup> U.S.D.A., *Report of the Chief of the Bureau of Agricultural Economics*, 1939, p. 5.

## CONSTITUTIONAL LAW IN 1939-1940

### THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1939

ROBERT E. CUSHMAN

*Cornell University*

During the 1939 term, President Roosevelt made his fifth appointment to the Supreme Court. Mr. Justice Butler died on November 16, 1939. Attorney-General Frank Murphy was appointed to this vacancy and took his seat on February 5, 1940. Presidents Lincoln and Taft also appointed five members of the Court; only President Washington and President Jackson appointed more than five. By his policy of choosing younger men, President Roosevelt reduced the average age of the members of the Court from seventy-two to sixty-one in less than three years. This change is important because it brings to the work of the Court younger and more vigorous men; it is also important because it extends the President's influence, through his appointment of justices, over a much longer period of time. It seems probable that we shall have a "Roosevelt Court" for many years to come.

#### A. QUESTIONS OF NATIONAL POWER

##### I. LEGISLATIVE POWER

###### 1. COMMERCE POWER

The Supreme Court invalidated the Guffey Act in 1936 in the *Carter* case<sup>1</sup> on the ground of the unconstitutionality of the labor provisions of the statute as well as its delegation of legislative power. Without passing upon the validity of the price-fixing provisions of the act, the Court held them to be inseparable from the labor provisions and declared the entire statute void. The Court said: "The conclusion is unavoidable that the price-fixing provisions of the code are so related to and dependent upon the labor provisions as conditions, considerations, or compensations, as to make it clearly probable that the latter being held bad, the former would not have been passed."

Congress promptly repudiated this judicial interpretation of congressional intent by passing in 1937 a new Bituminous Coal Act which provided for price-fixing and the regulation of competition, but omitted the objectionable labor provisions. The new act was held valid in *Sunshine Anthracite Coal Co. v. Adkins*.<sup>2</sup> The provisions of the new statute were closely similar to those of the old. The purpose was to stabilize the coal in-

<sup>1</sup> *Carter v. Carter Coal Company*, 298 U.S. 238, 1936. See this REVIEW, Vol. 31, p. 259.

<sup>2</sup> 310 U.S. 381, 1940.

dustry through price-fixing and the elimination of unfair competition. Regulation to this end was placed in the hands of the National Bituminous Coal Commission. Producers of bituminous coal were organized as members of a coal code, which provided for the establishment of minimum and maximum prices and for rules governing competitive practices. A tax of one cent per ton was placed on all sales of bituminous coal products. A tax of  $19\frac{1}{2}$  per cent was imposed upon the sale price of coal produced by those who are not members of the code. The commission was authorized to determine, under standards provided in the act, whether or not coal is bituminous. The Sunshine Anthracite Coal Company disputed the finding that it was producing bituminous coal, refused to join the code, and refused to pay the  $19\frac{1}{2}$  per cent tax. It denied the applicability of the statute to itself, and the constitutionality of it, if applicable.

The Court held that the statute did apply to the company and that it was valid. An opinion by Mr. Justice Douglas covered the following points: First, the commission's finding that the company produced bituminous coal is supported by substantial evidence and is therefore conclusive. Not having joined the code, the company is therefore liable to the  $19\frac{1}{2}$  per cent tax. Second, this tax is not a revenue measure, but a penalty; but this does not make it unconstitutional, since it is a device to aid Congress in its regulation of interstate commerce. The purpose and effect of the act is to regulate interstate commerce by placing under federal authority prices and business practices in the coal industry which affect that commerce. Third, Congress may, in its discretion, single out particular industries and remove them from the normal application of penalties under the Sherman Act. Fourth, the act does not invalidly delegate legislative power. The sub-legislative authority given to the commission is broad, but it is limited by accompanying legislative standards, which sufficiently control its discretion. No authority is delegated to private persons, since the code authorities all act under the jurisdiction of the commission. Fifth, the fixing of coal prices by Congress does not violate the due process clause of the Fifth Amendment any more than price-fixing by state authority violates the Fourteenth Amendment. This point was disposed of in *Nebbia v. New York*.<sup>3</sup> Sixth, the classification of coal producers into code and non-code groups does not violate the Fifth Amendment. The Fifth Amendment contains no equal protection clause. In exercising its commerce power Congress may therefore properly use discrimination as a method. Discrimination as embodied in the statute "constitutionally may be the price of non-compliance." There has long been controversy as to whether due process of law in the Fifth Amendment includes protection against the denial of the equal protection of the laws. The Court here holds that it does not. Mr. Justice McReynolds dissented, but wrote no opinion.

<sup>3</sup> 291 U.S. 502, 1934. See this REVIEW, Vol. 29, p. 45.

The Interstate Commerce Commission has statutory authority to supervise and effect consolidations of railroads. Such consolidations must "promote the public interest." The commission authorized a lease of the Chicago, Rock Island, and Gulf Railroad Company to the Chicago, Rock Island, and Pacific Railway Company. This arrangement eliminated an office and resulted in substantial saving. As a condition of the consolidation, the commission required that certain employees be compensated over a period of five years for losses which they would incur. These losses, comprising pay reductions, loss of employment, and necessary removals to other places, would have amounted during the five-year period to \$290,000. The savings due to the consolidation would be \$500,000 for the same period. In *United States v. Lowden*,<sup>4</sup> the question is raised whether the commission, as a condition of permitting one railroad to lease another, may require that resulting losses to employees be minimized. Speaking through Mr. Justice Stone, the Court upheld the commission's power. The opinion readily admits that the "public interest," which railroad consolidations must serve, is not a vague and general public interest synonymous with national social welfare, but a specific public interest in the maintenance of an "adequate rail transportation system." Reasonable safeguarding of the interests of employees, dislocated through a railroad consolidation, is closely enough related to the maintenance of an efficient transportation system to bring it within this concept of public interest. This is shown by many federal statutes which protect the interests of railway employees and by decisions holding these statutes to be within the commerce power. In holding void the first Railroad Retirement Act in 1935,<sup>5</sup> the majority of the Court had declared in a dictum that the purpose of the statute to provide economic security for railway workers was irrelevant to the power of Congress to regulate commerce. Mr. Justice Stone here observes that, in spite of this dictum, it is impossible for the Court to say that Congress had no rational basis for its judgment that the interests of railway workers here involved had a relation to the "public interest" as defined in the statute. There is no denial of due process of law in requiring a railroad which is being allowed to effect a substantial saving to divert part of that saving to make good the losses of its employees.

Sections of the Interstate Commerce Act require common carriers of petroleum to give to the Interstate Commerce Commission certain information for use in valuing their properties. The act defines common carrier in this connection as "all pipe-line companies . . . engaged . . . as common carriers for hire." The Valvoline Oil Company operates two refineries in Pennsylvania. It purchases oil at the wells in Pennsylvania, West Vir-

<sup>4</sup> 308 U.S. 225, 1939.

<sup>5</sup> *Railroad Retirement Board v. Alton R. Co.*, 295 U.S. 330, 1935. See this REVIEW, Vol. 30, p. 62.

ginia, and Ohio. This it transports through its own pipe lines to the refineries. It refused to supply the information required by law on the ground that it was not a common carrier and that the requirement took its property without due process of law. In *Valvoline Oil Company v. United States*,<sup>6</sup> the Court, speaking through Mr. Justice Reed, rejected both of these contentions. The company is a common carrier within the terms of the act, since it purchases oil from many sources and transports it. Its position is wholly different from that of an oil company which pumps oil from its own wells to its own refineries. The due process argument assumes that the information secured from the company will be used as a basis for regulation believed to be invalid. But this contingency may never arise, and therefore the company has suffered no damage.

## 2. POWER TO DISPOSE OF FEDERAL PROPERTY

The extent of the power of Congress to place conditions upon the disposal of federal property was involved in *United States v. San Francisco*.<sup>7</sup> In 1913, Congress granted to the city and county of San Francisco certain lands and rights of way in the public domain in Yosemite National Park and Stanislaus National Park. The grants were made to enable the city to provide itself with water and to establish an electricity supply system. The grants prohibited the city from selling or leasing to any private corporation or individual the right to sell or sub-let the water or power derived under the terms of the grant. The city, however, granted to the Pacific Gas and Electric Company, a private utility, the right to distribute and sell to consumers electric current produced under the grant. The government sought to enjoin the city from continuing this franchise to the company, on the ground that it violates the terms of the original grant. In an opinion by Mr. Justice Black, the government's position is upheld. The purpose of the condition attached to the original grant to the city was to make sure that electric current obtained thereunder should be sold by the city directly to consumers without private profit. Mr. Justice Black quotes at length from the congressional debates to establish this original congressional purpose. The city's franchise to a private company clearly violates the statutory condition. The conditions thus imposed do not attempt to regulate the internal affairs of the state and municipality, and thus do not go beyond the power of Congress. The Constitution explicitly gives Congress the power "to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States." In exercising this power, Congress may validly impose conditions "to avoid monopoly and to bring about a widespread distribution of benefits. The statutory requirement that . . . power be publicly distributed does not represent an exercise of a general control over public

<sup>6</sup> 308 U.S. 141, 1939.

<sup>7</sup> 310 U.S. 16, 1940.



policy in a state, but instead only an exercise of the complete power which Congress has over particular public property intrusted to it." The city may not continue to avail itself of the rights granted by the government and at the same time persist in violating the conditions upon which they were granted.

### 3. STATUS OF FEDERAL CEDED DISTRICTS

In *James Stewart & Company v. Sadrakula*,<sup>8</sup> the Court re-examined some of the major problems relating to the status of federal ceded districts within the states. These properties have been dubbed "federal islands," since the Constitution provides that federal jurisdiction over them is exclusive. In the present case, the company was a subcontractor engaged in building the New York Post Office. The New York labor law requires certain protection to workmen in the form of flooring and scaffolding in such a construction as the plaintiff was engaged in. The company did not comply with the New York statute, and as a result of its failure to do so a workman was killed and his administratrix brought action for damages. The New York Post Office site was acquired by the federal government by an act of cession of the New York legislature. Does the exclusive jurisdiction of the federal government over this site bar the application therein of the New York labor law? The Court, speaking through Mr. Justice Reed, held the New York statute validly applicable. He says: "The Constitution does not command that every vestige of the laws of the former sovereignty must vanish. On the contrary, its language has long been interpreted so as to permit the continuance until abrogated of those rules existing at the time of the surrender of sovereignty which govern the rights of the occupants of the territory transferred. This assures that no area, however small, will be left without a developed legal system for private rights." The policy of making the laws of the states in which these ceded districts are located operative within such districts has been followed by Congress from an early date. This has been consistently done with the criminal laws. Even without specific statutory action, some state laws have always remained applicable in these districts, but of course, these laws must not interfere with the national purposes for which the government acquired the district. No such interference results from the application of the state labor law. It may increase slightly the cost of construction, but this does not constitute a burden upon the government. The contractor himself enjoys no governmental immunity arising from his business relations with the government. The state law remains applicable until abrogated or modified by Congress. Subsequent changes in the state law, however, would not be effective within the district without congressional sanction.

<sup>8</sup> 309 U.S. 94, 1940.

## 4. EMINENT DOMAIN

The case of *United States v. Sponenbarger*<sup>9</sup> raised questions regarding the taking by the government of private lands by operation of the Mississippi Flood Control Act of 1928. This act establishes a system of flood control, but does not attempt the equal and complete protection of all lands in the flood area. The scheme is based on a levee system which constricts the water of the Mississippi to a moderate degree, but in periods of extreme floods allows some of the water to escape over certain lower levees known as fuse-plugs. In short, some lands are designated as floodways and subjected to moderate flooding in times of high water in order to avoid destructive damage to the entire area. The respondent's land lay in the path of one of these proposed floodways, although the floodway appears never to have been constructed. This particular land was not as fully protected from floods as that in neighboring areas. It was, however, better protected than it had been before any government construction was undertaken. Was the respondent's property taken without compensation within the meaning of the Fifth Amendment, and did he have a right of recovery under the act? The Court, in an opinion by Mr. Justice Black, answered both questions in the negative. The government's program of construction did not directly injure the land. The government is not liable because some land is easily protected from floods, while other land cannot be fully protected. There was no taking by the government. Assuming that this land is still liable to danger in high water, the additional protection, even though not fully adequate, more than offsets any possible injury which the respondent will suffer. The net result has been a gain for this landowner, and he accordingly has no claim on the government.

## II. JUDICIAL POWERS

## 1. EFFECT OF AN UNCONSTITUTIONAL STATUTE

The question of just what is the precise legal effect of a decision holding a statute unconstitutional is not simple. Few courts have had the necessary combination of courage and bad judgment to apply rigidly the old orthodox theory of unconstitutionality. This was stated years ago in *Norton v. Shelby County*,<sup>10</sup> in which Mr. Justice Field declared that an unconstitutional statute was not law and never had been law; it conferred no rights, no duties, no liabilities. No legal consequences, in short, could be built upon it. The court's decision does not change a valid statute into a void one; the statute has always been void. This theory of unconstitutionality is wholly logical, but it results in so much injustice and overlooks so many practical realities that modern courts have applied it only with substantial qualifications. This is what the Supreme Court does in *Chicot*

<sup>9</sup> 308 U.S. 256, 1939.

<sup>10</sup> 118 U.S., 425, 1886.

County Drainage District v. Baxter State Bank.<sup>11</sup> The bank held the bonds of the district, and these were in default. The district availed itself of the federal Municipal Bankruptcy Act, readjusted its debt, and secured from the federal district court a decree affirming this readjustment. No appeal was taken from this decree. Later, on a similar set of facts, the Municipal Banking Act was held void in *Ashton v. Cameron County Water Improvement District*.<sup>12</sup> Obviously the readjustment of the Chicot County Drainage District's debt was accomplished under an unconstitutional statute, and the bank sought to open the case and assert its full claims. In an opinion by Chief Justice Hughes, the Court held that the debt readjustment in the present case is *res judicata*. A full and complete trial was had, no constitutional questions were raised, and the decision reached is not now open to collateral attack. Referring to the doctrine of *Norton v. Shelby County*, the Chief Justice declared that it must be taken "with qualifications." He observes: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects—with respect to particular relations, individual and corporate, and particular conduct, private or official." Thus the doctrine of *res judicata* may be invoked to prevent the injustice or disruption of vested interests which would result from what the Chief Justice calls the "principle of absolute retroactive invalidity."

## 2. ORIGINAL JURISDICTION OF THE SUPREME COURT— SUITS BETWEEN STATES

May a state invoke the original jurisdiction of the Supreme Court in a suit against another state to collect taxes due it from a citizen of that state? In *Massachusetts v. Missouri*,<sup>13</sup> the Supreme Court held not. A citizen of Massachusetts, resident there, died leaving property in that state. She had also created trusts of securities which were kept in Missouri, and the trustees were residents of Missouri. Both Massachusetts and Missouri sought to collect estate taxes on the transfer of these trusts. Massachusetts brought action in the Supreme Court to prevent Missouri from collecting her tax. Speaking through Chief Justice Hughes, the Court declined to take jurisdiction. The opinion ran as follows: First, there is no justiciable controversy between the two states as such, since each is entitled to levy its tax on the trusts in question, and the amount of the trusts is sufficient to satisfy both demands. The case differs from *Texas v. Florida*,<sup>14</sup> where

<sup>11</sup> 308 U.S. 371, 1940.

<sup>12</sup> 298 U.S. 513, 1936. See this REVIEW, Vol. 31, p. 258.

<sup>13</sup> 308 U.S. 1, 1939.      <sup>14</sup> 306 U.S. 398, 1939. See this REVIEW, Vol. 34, p. 262.

the Court took jurisdiction on the ground that the amount of the estate was not sufficient to satisfy the tax claims of four states plus the federal government. Second, Missouri tax provisions exempt from taxation intangible estates of non-residents domiciled in states which allow reciprocal exemptions. Massachusetts does extend this reciprocal exemption. This Missouri provision, however, is not a compact between the two states and does not support a right of action by Massachusetts against Missouri. Third, Massachusetts contends that the action may be considered as a suit by Massachusetts against the trustees in Missouri for the collection of the Massachusetts tax, and that it therefore falls within the provision of the Judiciary Article giving the Court jurisdiction in suits "between a state and citizens of another state." Assuming it to be such a suit, the Court is not obliged to take jurisdiction in every case in which it possesses it, but may in its discretion decline to do so if another suitable forum exists. This rule rests upon considerations of convenience and the need of protecting the Supreme Court from a flood of litigation. The Supreme Court is not obliged to take jurisdiction in "actions by states to recover taxes claimed to be payable by citizens of other states." In the present case, it does not appear that Massachusetts is in any way barred from suing the Missouri trustees in the courts of Missouri.

*Arkansas v. Tennessee*<sup>15</sup> settled a boundary dispute arising from a change in the course of the Mississippi River which took place in the year 1821. This avulsion cut across the neck of a peninsula of land, thereby placing in dispute title to the peninsula thus cut off. Jurisdiction over the land has been claimed and exercised by Tennessee since 1826. Affirming the findings of a Special Master, the Court sustained the jurisdiction of Tennessee on the basis of prescription and acquiescence on the part of Arkansas. This principle of prescription overrides the old doctrine of *thalweg* which places the boundary between states at the middle of the main channel of any dividing water.

The deference, to the point of tenderness, with which the Supreme Court deals with states of the Union characterizes its opinion in *Wyoming v. Colorado*.<sup>16</sup> The Laramie River runs between the two states. A previous decree of the Supreme Court had determined the exact amount of water which Colorado might divert from the river.<sup>17</sup> Evidence was presented by Wyoming that Colorado had diverted more than this, and Wyoming sought to have Colorado adjudged in contempt for violation of the decree. This raised two questions; first, is the decree enforceable against Colorado, and second, if it is, should Colorado be adjudged in contempt? Chief Justice Hughes, speaking for the Court, declared that Colorado is in contempt for violating the decree, although it is not shown that Wyoming has

<sup>15</sup> 310 U.S. 563, 1940.

<sup>16</sup> 309 U.S. 572, 1940.

<sup>17</sup> *Wyoming v. Colorado*, 298 U.S. 573, 1936.

been injured. The record showed some evidence of acquiescence upon the part of Wyoming officials in the unlawful acts of Colorado. The Chief Justice therefore concludes: "In the light of all the circumstances, we think it sufficiently appears that there was a period of uncertainty and room for misunderstanding which may be considered in extenuation. In the future there will be no ground for any possible misapprehension. . . ." The petition of Wyoming was accordingly denied, with an equal division of the costs. In short, while Colorado is guilty of contempt, the Court will not do anything about it now.

Another state, Illinois, found itself under discipline in the case of *Wisconsin v. Illinois*.<sup>18</sup> This is the latest phase of the important litigation in which most of the states bordering on the Great Lakes prevented Illinois from continuing to lower the lake level by excessive diversion of water through the Chicago Drainage Canal. In 1930, the Court handed down a decree enjoining Illinois from diverting more than an annual average of 1,500 cubic feet per second after December 1, 1938.<sup>19</sup> In the meantime, sanitary protection to the city of Chicago was to be built up through the construction of adequate sewage disposal plants. In the present case, Illinois sought permission to divert 5,000 cubic feet per second until the end of 1942, when the sewage disposal plants would be completed. The Court held *per curiam* that Illinois had failed to show that it had employed all possible means at its command to complete the construction in time. Notwithstanding this, the Court appointed a Master to consider all contingencies and report back his findings.

### 3. SUABILITY OF THE GOVERNMENT BY CONSENT

When Congress created the Federal Housing Administration in 1934, it provided that the Administrator, in carrying out the provisions of the act, "be authorized, in his official capacity, to sue and be sued in a court of competent jurisdiction, State or Federal." In *Federal Housing Administration v. Burr*,<sup>20</sup> the question is raised whether this provision permits a creditor of an employee of the Federal Housing Administration to bring action of garnishment against his salary. Speaking through Mr. Justice Douglas, the Court holds that it does. Congress was not obliged to waive the Federal Housing Administration's immunity from suit, but when it did so, it included within the right to sue a normal action to garnishee wages, since this is a customary form of suit. What the opinion gives with one hand, however, it appears to take away with the other. The statute provides that all claims against the Federal Housing Administration "shall be paid out of funds made available by the Act." But only those funds are

<sup>18</sup> 309 U.S. 569, 1940.

<sup>19</sup> *Wisconsin v. Illinois*, 281 U.S. 179, 1930. See this REVIEW, Vol. 25, p. 79.

<sup>20</sup> 309 U.S. 242, 1940.

subject to execution which the Federal Housing Administration has in its own possession free from Treasury control. The statute gives no right to reach governmental funds generally. Since the funds of the Federal Housing Administration are all deposited with the Treasurer of the United States and may be paid out only through the Chief Disbursing Officer of the Treasury, it does not appear that the creditor in this case is going to get his money. Mr. Justice Douglas consoles him by observing: "Since the respondent obtains its right to sue from Congress, it necessarily must take it subject to such restrictions as have been imposed. The fact that execution may prove futile is one of the notorious incidents of litigation, as is the fact that execution is not an indispensable adjunct of the judicial process."

#### 4. JURISDICTION—INTEREST OF PARTIES

A case of substantial practical importance is that of *Perkins v. Lukens Steel Co.*,<sup>21</sup> arising under the Public Contracts Act of 1936. This act provides that those who sell goods to the government under contract shall pay the minimum wages currently paid in the "locality in which . . . the supplies are to be manufactured or supplied." The Secretary of Labor is to delimit these localities. Acting under the statute, the Secretary determined the minimum wage for the iron and steel industry in six localities set up by administrative action after public hearings. The steel company in this case wishes to sell steel products to the government. It contends that the determination of the six localities by the Secretary is arbitrary and that more than six ought to be established. These administrative regulations prevent it from bidding for government contracts upon what it alleges to be a fair basis. It accordingly sought an injunction to restrain all government officials and agents from enforcing the regulations of the Secretary of Labor, not only as they apply to the petitioner, but as they apply to the entire iron and steel industry. The United States Circuit Court of Appeals for the District of Columbia granted such an injunction. The Supreme Court, in an opinion by Mr. Justice Black, reversed this decision and denied the petition. The opinion runs as follows: First, the action of the lower court in granting the relief asked for goes beyond the limits of any existing controversy. It extends to an entire industry; it applies to many public officials; it affects the status of persons whose rights and legal relations have not been asserted. The claim of the petitioners is a vague and general one in which they might be joined by almost any member of the public seeking to prevent what seemed to him an erroneous administration of the law. Second, the petitioners do not have a legal cause of action. The government is not obliged to purchase supplies from private individuals; it may lawfully produce its own iron and steel in its own plants. No one has a

<sup>21</sup> 310 U.S. 113, 1940.

constitutional or statutory right to sell anything to the government on his own terms. The provisions under attack embody the government's purpose "to impose obligations upon those favored with government business and to obviate the possibility that any part of our tremendous national expenditures would go to forces tending to depress wages and purchasing power and offending fair social standards of employment." The statute exerts no regulatory power over private business. If its provisions are unpalatable, the petitioners may escape them by declining to sell to the government.

#### 5. JUDICIAL REVIEW OF ADMINISTRATION

In two cases, the Court dealt with administrative rulings of the Federal Communications Commission. In the first of these, the commission refused to license a broadcasting station because of the applicant's lack of financial qualification. The federal circuit court of appeals found that this finding of inadequate financial status was grounded upon an erroneous interpretation of state law and remanded the case for rehearing. The commission then proceeded to reconsider the applicant's petition for a license along with applications from two rival firms. In an opinion by Mr. Justice Frankfurter, the commission's right thus to consider the three applications together was sustained over the contention of the original applicant that its case must receive prior action under the mandate of the circuit court of appeals. The statute charges the commission with the duty of issuing broadcasting licenses under the criterion of "public convenience, interest, or necessity." The duty to apply this standard is not to be hampered by technical rules of procedure. The original finding of the commission is not the decision of an inferior court, but the decision of an administrative body. The mandate of the court of appeals does nothing but require the commission to correct the legal error originally made. The commission is not only free, but obligated, to pass thereafter upon the applicant's petition, together with rival petitions, in the light of the standard of "public convenience, interest, or necessity." This is the case of *Federal Communications Commission v. Pottsville Broadcasting Co.*<sup>22</sup>

In *Federal Communications Commission v. Sanders Brothers Radio Station*,<sup>23</sup> the company and a competitor both applied to the commission for a license to broadcast from Dubuque, Iowa. The Sanders Brothers station had broadcast for some time from a nearby point. Its competitor had never broadcast. Evidence was presented to the commission to show that there was not sufficient business in Dubuque to support the two stations. It was alleged that advertisers would have to be drawn away from the existing station if the new one were to survive. The commission, however, found that public interest, convenience, and necessity would be served by

<sup>22</sup> 309 U.S. 134, 1940.

<sup>23</sup> 309 U.S. 470, 1940.

granting both licenses, and this was done. The Sanders Brothers station appealed to the Circuit Court of Appeals for the District of Columbia, alleging that it would suffer economic injury if the competing station were licensed and asking that the commission's order granting that license be set aside as arbitrary and capricious. A decision of the circuit court of appeals thus setting aside the commission's order was reversed by the Supreme Court in an opinion by Mr. Justice Roberts. The commission was created to control broadcasting in the public interest. The act does not, however make broadcasting stations common carriers or monopolies, nor does it abandon in respect to broadcasting the principle of free competition. An injured competitor in the radio field has no standing to attack the unwelcome competition unless he can show that the public interest itself is jeopardized. While such economic injury is not to be disregarded by the commission, it does not call for separate and independent consideration in determining whether to grant or withhold a license. The petitioner here could properly raise the issue in the form in which he did, but the findings of the commission that the licensing of both stations served the public interest were sufficiently supported by evidence to sustain them.

Several cases involved judicial review of decisions of the National Labor Relations Board. In *American Federation of Labor v. National Labor Relations Board*,<sup>24</sup> the issue was whether the judicial review of board findings provided in the Wagner Act extended to the board's order certifying a C.I.O. organization of workers as the exclusive bargaining representative of all the longshoremen on the Pacific coast. The A. F. of L., claiming itself to be aggrieved by this order of the board, alleged that the statute does not contemplate any such widespread blanket certification of employee representatives to be effective over so wide an area. The Court, speaking through Mr. Justice Stone, held that the history of the Wagner Act indicated clear congressional intention to exclude certifications of employee representatives from judicial review. Since the federal courts had not before exercised such judicial review, there is no denial of due process by withholding it from them in the present statute.

In *National Labor Relations Board v. Falk Corporation*,<sup>25</sup> the board found that the company had engaged in unfair labor practices and issued a cease and desist order to compel their discontinuance. It ordered the company to disestablish its independent or company union before the date upon which an election was ordered for the purpose of selecting bargaining representatives for the workers. The board asked the circuit court of appeals to enforce the order. The court affirmed the finding of unfair labor practices and the order for their discontinuance, but it modified this order by ruling that the board could not eliminate the independent union, if

<sup>24</sup> 308 U.S. 401, 1940.

<sup>25</sup> 308 U.S. 453, 1940.



purged of company influence, from the ballot to be used in the election of employee representatives. It also omitted that portion of the board's order which required the company to post notices of its intention to "cease and desist." In an opinion by Mr. Justice Black, the Supreme Court sustained the board's original order. The board, alone, is granted power to determine, through the holding of elections, "suitable" representatives of the workers for purposes of collective bargaining. The circuit court of appeals had no authority to give the board directions as to how to perform this task. The board's findings that the independent union could never emancipate itself from company domination is supported by substantial evidence. There is also statutory sanction for the board's order that the company post notices of its intention to comply with the law. This is important as conveying to the employees a sense of freedom from hostile influence.

*National Labor Relations Board v. Waterman Steamship Corporation*<sup>26</sup> held that certain findings of fact made by the board were supported by substantial evidence. These findings were that the company had terminated the "tenure of employment" of certain seamen because of their affiliation with the C.I.O., and also that the company was according pass privileges on its ships to representatives of the A. F. of L. but not of the C.I.O. The company claimed that the cessation of the tenure of employment of the seamen in question was the normal one resulting from the termination of the written articles under which every seaman sails. In an opinion by Mr. Justice Black, it was stated that ample evidence showed that these articles exist for the protection of the seamen and that while they come to an end when the ship reaches its home port, they do not represent a termination of employment. They merely mean that the voyage is over.

Do persons injured by the failure of an employer to obey an order of the National Labor Relations Board commanding discontinuance of unfair labor practices have standing to petition a federal court to adjudge the employer in contempt? In *Amalgamated Utility Workers v. Consolidated Edison Company*<sup>27</sup> of New York, the Court, speaking through Chief Justice Hughes, held not. The board has exclusive jurisdiction to administer the act and issue orders for its enforcement. The unfair labor practices which the statute forbids are matters of public concern, just as are the unfair methods of competition forbidden by the Federal Trade Commission Act. Neither act creates any private right of action. If an employer disobeys a lawful order of the board, it is the board's responsibility to seek enforcement through appropriate procedures.

<sup>26</sup> 309 U.S. 206, 1940.

<sup>27</sup> 309 U.S. 261, 1940.

## III. BILL OF RIGHTS

Two cases involved wire-tapping. While both arose under the provisions of a federal statute, they have an indirect bearing upon problems of search and seizure under the Fourth Amendment. In *Nardone v. United States*,<sup>28</sup> decided in 1937, the Supreme Court reversed federal convictions for crime because they were procured by evidence secured by federal officers through the tapping of telephone wires. The case rested upon the provision of the Federal Communications Act of 1934 forbidding any person to intercept and divulge communications by telephone and telegraph unless authorized by the sender. *Nardone* was granted a new trial in which this intercepted evidence was excluded. The trial judge refused, however, to allow *Nardone* to question the prosecution as to the uses to which it had put the information secured by the unlawful wire-tapping. In an opinion by Mr. Justice Frankfurter, the Court held this to be reversible error. "The burden is, of course, on the accused in the first instance to prove to the trial court's satisfaction that wire-tapping was unlawfully employed. Once that is established—as was plainly done here—the trial judge must give opportunity, however closely confined, to the accused to prove that a substantial portion of the case against him was a fruit of the poisonous tree. This leaves ample opportunity to the government to convince the trial court that its proof had an independent origin." This is the case of *Nardone v. United States*.<sup>29</sup>

In *Weiss v. United States*,<sup>30</sup> the defendants were convicted of using the mails to defraud certain insurance companies. The government's vital evidence was obtained by extended and systematic tapping of telephone wires. Both interstate and intrastate telephone calls were intercepted. Some of the defendants turned state's evidence after listening to phonograph records of the conversations thus secured, and gave the government permission to use this evidence. In an opinion by Mr. Justice Roberts, the Court disposed of two questions raised by these facts. It held first that the Federal Communications Act forbids the intercepting and divulging of intrastate as well as interstate telephone communications. While the statutory provision is obscure on this point, the Court justifies its view by the fact that an interceptor cannot distinguish between interstate and intrastate messages. Secondly, the authorization by the defendants who turned state's evidence was ineffective to make the testimony admissible. The statute contemplates wholly voluntary authorization by the sender, while the permission here resulted from the senders' hope of securing leniency at the hands of prosecuting officials.

Two cases arose under the due process clause of the Fifth Amendment.

<sup>28</sup> 302 U.S. 379, 1937. See this REVIEW, Vol. 33, p. 250.

<sup>29</sup> 308 U.S. 338, 1939.      <sup>30</sup> 308 U.S. 321, 1939.

In *Yearsley v. Ross Construction Company*,<sup>31</sup> the Court, speaking through Chief Justice Hughes, found no denial of due process in refusing to a property owner injured by river improvement work carried on by a private company under contract with the government the right to sue the contractor for damages. Since the work is authorized by the government and is being done for its benefit, incidental damages to private property are attributable to the government and not to the contractor doing the work. The property owner is entitled to compensation for property taken or directly damaged, but his redress must be secured by direct suit against the government in the Court of Claims.

In *Paramino Lumber Company v. Marshall*,<sup>32</sup> the question arose whether Congress by private act could properly order the United States Compensation Commission to reopen a compensation case, review it, and issue a new order after the statutory time limit for such reconsideration had expired. In an opinion by Mr. Justice Reed, the Court held that this does not deny due process of law. It does not set aside a judgment, create a new right of action, or direct the entry of an award. It is a curative act, designed to remedy a mistake in administration. It was urged that the equal protection clause of the Fourteenth Amendment should be read into the due process clause of the Fifth Amendment, and that if so read the Fifth Amendment would forbid this private act. The Court rejects this interpretation. Private acts are not forbidden by the Constitution, nor is "this legislation an excursion of Congress into the judicial function."

#### IV. TWENTY-FIRST AMENDMENT

The complete and exclusive nature of the authority over intoxicating liquors within their borders which the Twenty-First Amendment gives to the states is emphasized in *Ziffrin v. Reeves*.<sup>33</sup> The Kentucky laws relating to liquor permit its manufacture under prescribed conditions and surround the transportation and sale of liquor with rigid restrictions. The appellant is an Indiana corporation licensed to carry on interstate commerce as a contract motor carrier under the federal act of 1935. It transported whiskey from Kentucky to Illinois in violation of the Kentucky state regulations and sought to enjoin the Kentucky authorities from enforcing state licensing and penal provisions against it. It claimed that since its business was exclusively interstate commerce, state authority could not properly reach it. In an opinion by Mr. Justice McReynolds, the Court held that the Twenty-First Amendment gives to states the power to legislate regarding liquor unfettered by any limitations arising from the commerce clause. The Motor Carrier Act of 1935 gives the appellant no fed-

<sup>31</sup> 309 U.S. 18, 1940.

<sup>32</sup> 309 U.S. 370, 1940.

<sup>33</sup> 308 U.S. 132, 1939.

eral rights which may be set up against the complete authority which the amendment gives to the state.

#### V. STATUTORY CONSTRUCTION

Three very important cases under the federal antitrust acts deserve comment although they involve no constitutional questions. The most conspicuous of these is the case of *Apex Hosiery Company v. Leader*,<sup>34</sup> in which a divided court held that a sit-down strike which tied up for months the productive capacity of a factory supplying the interstate market is not a restraint of trade within the prohibitions of the Sherman Act. The facts were not in dispute. The company employed some 2,500 men and sold 80 per cent of its \$5,000,000 annual output outside the state. The employees struck in an effort to secure a closed shop agreement, took possession of the plant, and carried on a sit-down strike for more than six weeks. The strikers were guilty of violence and the wanton destruction of the company's property. The company brought suit against the union conducting the strike for triple damages under the Sherman Act, and received a verdict in the trial court. The triple damage award amounted to \$711,932.55. The Supreme Court, speaking through Mr. Justice Stone, set aside the verdict on the ground that the Sherman Act was inapplicable to the conduct of the strikers. There is no question that the strikers were guilty of criminal and tortious conduct. Such conduct, however, calls for redress in the criminal and civil courts of the state, and these courts are open to the injured company. The activities of the strikers do not constitute the restraints of trade or commerce which the Sherman Act condemns. The history of that statute shows clearly the purpose of its framers to reach and prevent restraints upon commercial competition. The decisions of the Supreme Court have rested upon this interpretation. The theory was elaborated in the *Standard Oil Company* and *American Tobacco Company* cases in 1911<sup>35</sup> in which the Court announced its famous "rule of reason," which applied the prohibitions of the Sherman Act only to those restraints of trade known to the common law and unreasonably restricting interstate competition. The Court reviews the cases, beginning with *Loewe v. Lawler*<sup>36</sup> in 1908, in which federal antitrust laws have been enforced against labor organizations. In all of these cases, the labor union activity, through such devices as the secondary boycott, had actually sought to interfere with free competition in interstate commerce. In no case where interstate competition has not been a major objective of the labor union activity has the Court held that the mere cessation or obstruction of interstate commerce amounted to a restraint of trade within the meaning of the Sherman Act. To apply the antitrust laws to all acts which interrupt the production

<sup>34</sup> 310 U.S. 469, 1940.

<sup>35</sup> 221 U.S. 1, and 221 U.S. 106, 1911.

<sup>36</sup> 208 U.S. 274, 1908.

of goods for the interstate market would bring within their scope practically every strike. This Congress clearly did not intend to do. The mere fact of violence and unlawful conduct in the present case does not bring the strike within the provisions of the statute. Chief Justice Hughes dissented in an opinion in which Justices McReynolds and Roberts concurred. He differed with the majority in their construction of the Court's earlier decisions and asserted that the labor union activity in the present case fell clearly within the definition of a conspiracy in restraint of trade forbidden by the Sherman Act.

In *United States v. Socony-Vacuum Oil Company*,<sup>37</sup> in a five-to-two decision, the Court, speaking through Mr. Justice Douglas upheld the conviction of the defendant for violation of the Sherman Act. The case is an interesting one, though the facts and legal issues are much too complicated for complete recital. The defendants had worked out various collective arrangements and agreements for stabilizing the oil industry in the Midwest territory. It was not disputed that they had done an effective job and that they had pulled the industry out of the slump due to overproduction and ruinous price cutting. The efforts culminating in the illegal conspiracy antedated the N.R.A., were later carried on in coöperation with N.R.A. administrators, and were at many points examined and approved by various federal officials. After the collapse of the N.R.A. with the *Schechter* decision,<sup>38</sup> the defendants were in effect doing as private persons what the government had itself tried to do by legislation. In the judgment of the majority, none of this constituted a defense. No federal officials have any authority to authorize or condone violations of the law. The activities of the defendants resulted in placing in their hands the power to fix gasoline prices, and there was evidence that they had exercised that power. It is no defense that the prices so fixed may have been reasonable, since the power to fix reasonable prices includes the power to fix unreasonable prices. A conspiracy to fix prices is the most common type of conspiracy in restraint of trade forbidden by the Sherman Act. In spite of their alleged good intentions and the wholesome results which may have resulted in some cases from their activities, the defendants were guilty of criminal conduct under the Sherman Act. Justices Roberts and McReynolds dissented.

The relation of patent rights to the antitrust laws was involved in *Ethyl Gasoline Corporation v. United States*,<sup>39</sup> and the company was enjoined from imposing upon licensees distributing its product the restrictive conditions which it had been enforcing. The company owns the patents under which lead-treated gasoline may be produced. To secure ethyl

<sup>37</sup> 310 U.S. 150, 1940.

<sup>38</sup> *Schechter v. United States*, 295 U.S. 495, 1935. See this REVIEW, Vol. 30, p. 58.

<sup>39</sup> 309 U.S. 436, 1940.

gasoline from a licensed refiner, a jobber must have a license from the appellant. Of the twelve thousand jobbers in the United States, eleven thousand are licensed by the appellant. The appellant has issued licenses to 123 refiners, including most of the large ones. These refiners refine 88 per cent of all the gasoline sold in the country. The appellants do not charge a royalty upon the sale of their product, but they sell to their licensees their requirements of the patented fluid. They impose no rigid resale price agreements. They have, however, drawn up a general code of obligations applicable to licensed refiners and jobbers. Some of the provisions of this code relate to the purity of the product, to the proportions in which the patented fluid shall be mixed with gasoline, and particularly to a differential to be maintained between the retail price of ethyl gasoline and the next best non-premium grade sold. Speaking through Mr. Justice Stone, the Court held that the restraints imposed by the appellant upon those to whom it sells its patented products go far beyond any rights legitimately incident to the patent itself and amount, particularly those involving price control, to an unlawful restraint of trade under the Sherman Act. It is not important that the appellant did not establish an iron-clad code of resale prices. Its enforcement of its restrictions upon licensees has been far from systematic and relentless. Some of the pressure to enforce compliance came in the form of an appeal to a "code of ethics" for the industry. Where possible, the amenities have been observed; but the industry has been fully educated to the realization that the appellant possesses power to dictate both prices and trade policy.

## QUESTIONS OF STATE POWER

### I. THE FOURTEENTH AMENDMENT

#### 1. DUE PROCESS OF LAW

1. *Civil Rights*. Constitutional protection to freedom of press and speech was tightened in *Schneider v. Irvington*.<sup>40</sup> Four cases were here merged, all of them involving the validity of municipal ordinances (of Los Angeles, Milwaukee, Worcester, Mass., and Irvington, N. J.) forbidding the distribution of handbills in the streets and other public places. The Irvington ordinance went still further and forbade canvassing or the distribution of literature from house to house without permission from the police. The ordinances were defended as reasonable police regulations to prevent the littering of the streets, and the protection of citizens from unsolicited canvassing with its incidental annoyance and danger. In an opinion by Mr. Justice Roberts, the Court held the four ordinances void as abridging the freedom of speech and press protected by the due process clause of the Fourteenth Amendment from invasion by the states. *Lovell v. Griffin*,<sup>41</sup>

<sup>40</sup> 308 U.S. 147, 1939.

<sup>41</sup> 303 U.S. 444, 1938. See this REVIEW, Vol. 33, p. 259.

decided in 1938, held that freedom of the press includes the right to distribute pamphlets and circulars and held void an ordinance which forbade such circulation without the prior permission of the city manager. Cities may have a duty to keep their streets clean and free from obstruction, but as a means of doing so they may not forbid a person rightfully on the streets from handing literature to one willing to receive it. The streets are natural and proper places for the dissemination of information and opinion. The public convenience of clean streets does not justify a regulation which deprives citizens of this constitutional right. The ordinance restricting canvassing, which is not limited to commercial canvassing, and in this case was violated by one distributing religious tracts from house to house, establishes a prior censorship upon the distribution of literature or the communication of views. The administration of this censorship rests in the discretion of police officials. The ordinance violates the freedom of both speech and press. The city may properly control commercial canvassing and may take suitable precautions against trespassing and frauds committed by canvassers. But it may not enforce the drastic prohibition here involved.

It is a logical development of the doctrine just discussed that peaceful picketing is included within freedom of speech and press, and the Court so decided in two important cases. In *Thornhill v. Alabama*,<sup>42</sup> the state law made it a misdemeanor to loiter or picket on or near the premises of any one engaged in a lawful business, for the purpose of dissuading others from trading with or working for those engaged in that business. *Thornhill* and others were convicted under the statute. They had been guilty of no violence and had resorted to no threats or intimidation. In an opinion by Mr. Justice Murphy, the statute was held void as a denial of free speech amounting to a denial of due process. The validity of the statute must be judged from its face. By its own terms, it would prevent "every practicable method whereby the facts of a labor dispute may be publicized in the vicinity of the place of business of an employer." It is void, therefore, on its face. The orderly dissemination of information concerning the facts of a labor dispute is "within that area of free discussion that is guaranteed by the Constitution." Labor relations are matters of great public importance, and free discussion of the problems involved is essential to the intelligent handling of those problems. Freedom of speech extends to the means used to secure an informed and educated public opinion with respect to a matter of public concern. The state has the right and duty to protect life and property and to maintain public order. Picketing which jeopardizes any of these public interests may be forbidden. But a showing of clear and present danger of substantive evils is necessary to abridge the normal liberty of discussion here involved. No such showing could be

<sup>42</sup> 310 U.S. 88, 1940.

made in the present case. A similar result was reached in *Carlson v. California*.<sup>43</sup> Here a county ordinance not only forbade picketing in terms similar to those in the Alabama statute, but further forbade the display of banners, placards, and the like designed to turn business or workers away from a factory or business establishment. Here again the picketing was peaceful and orderly. Speaking again through Mr. Justice Murphy, the Court held that the display of signs and banners is a natural and appropriate means of conveying information on matters of public concern, and is therefore part of the freedom of the press protected against state infringement by the Fourteenth Amendment. The ordinance in question does not forbid the display of all signs and banners, but only those which relate to labor disputes.

The Court disposed of the highly controversial compulsory "flag salute" issue in the case of *Minersville School District v. Gobitis*.<sup>44</sup> The Gobitis children, aged twelve and ten, were expelled from the public schools of Minersville, Pennsylvania, for refusing to salute the national flag as part of a daily school exercise. Such salute was required of both teachers and pupils by the board of education. The Gobitis family are members of the sect known as "Jehovah's Witnesses," for whom the Bible as the Word of God is the supreme authority. The children had been brought up to believe that to salute the flag was forbidden by the Bible. As a result of their expulsion from the public school, their parents were required by the compulsory education laws of the state to place them in private schools. The father sought an injunction to restrain the local school authorities from continuing to require the flag salute ceremony as a condition of his children's attendance at the public school. He alleged that the requirement is a violation of the guarantee of religious freedom in the First Amendment, a guarantee which has been absorbed into the due process protection of the Fourteenth Amendment. The Court rejected his contention and upheld the flag salute requirement. The opinion of Mr. Justice Frankfurter runs as follows. First, while the Constitution protects freedom of religious belief, that freedom is not absolute and does not relieve the citizen of his obligation to obey the general laws of the land or discharge his political responsibilities. The case calls for a compromise of the two conflicting interests involved, but "every possible leeway should be given to the claims of religious faith." Second, "national unity is the basis of national security. . . . The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people and transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization. 'We live by symbols.' The flag is the symbol of our

<sup>43</sup> 310 U.S. 106, 1940.

<sup>44</sup> 310 U.S. 586, 1940.



national unity, transcending all internal differences, however large, within the framework of the Constitution." Third, the rule of the local school board must be viewed as though it were the action of the state legislature. The question whether the flag salute requirement amounts in this case "to a lawless inroad on that freedom of conscience which the Constitution protects" is "an issue of educational policy for which the courtroom is not a proper arena." The law-making body has decided that the requirement is an appropriate means "to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious." For the Court to hold the requirement void as abridging religious liberty "would amount to no less than the pronouncement of a pedagogical and psychological dogma in a field where courts possess no marked and certainly no controlling competence." Fourth, the state cannot validly compel all children to attend the public schools. *Pierce v. Society of Sisters*.<sup>45</sup> "But it is a very different thing for this Court to exercise censorship over the conviction of legislatures that a particular program or exercise will best promote in the minds of children who attend the common schools an attachment to the institutions of their country." The opinion does not explain why it is different. Fifth, "for us to insist that, though the ceremony may be required, exceptional immunity must be given to dissidents, is to maintain that there is no basis for a legislative judgment that such an exemption might introduce elements of difficulty into the school discipline, might cast doubts in the minds of the other children which would themselves weaken the effect of the exercise."

Mr. Justice Stone wrote a dissenting opinion which may be summarized as follows. First, the flag salute requirement is unique in the history of Anglo-American legislation. It not merely suppresses freedom of speech and the free exercise of religion, but it goes further and actually "seeks to coerce children to express a sentiment which, as they interpret it, they do not entertain, and which violates their deepest religious convictions." Second, while religious liberty is not absolute, but may be curtailed in the interest of public morals, safety, health, and good order, "it is a long step, and one which I am unable to take, to the position that the government may, as a supposed educational measure and as a means of disciplining the young, compel public affirmations which violate their religious conscience." Third, while saluting the flag may contribute to national unity, there are other ways of achieving that result besides "compelling the pupil to affirm that which he does not believe and by commanding a form of affirmance which violates his religious convictions." The government is not being deprived, by being made to waive the requirement in the present case, of any interest or function which it is entitled to maintain at the expense of the constitutional protection to religious liberty. Fourth,

<sup>45</sup> 268 U.S. 510, 1925. See this REVIEW, Vol. 20, p. 98.

infringements of personal liberties have always been justified, as here, "in the name of righteousness and the public good, and [there have been] few which have not been directed, as they are now, at politically helpless minorities." "If these guarantees are to have any meaning, they must, I think, be deemed to withhold from the state any authority to compel belief or the expression of it where that expression violates religious convictions, whatever may be the legislative view of the desirability of such compulsion." The Court ought not to refrain from reviewing the legislative judgment as to the policy of the law where religious liberty as guaranteed by the Bill of Rights is at stake. Fifth, the interest of the state in maintaining discipline in the public schools does not justify the compulsion here imposed. "I cannot say that the inconveniences which may attend some sensible adjustment of school discipline in order that the religious convictions of these children may be spared, presents a problem so momentous or pressing as to outweigh the freedom from compulsory violation of religious faith which has been thought worthy of constitutional protection."

Mr. Justice Stone's opinion deserves a place in the classic literature of civil liberty. It seems to the writer to dispose effectively of the reasoning of the majority opinion. The opinion of Mr. Justice Frankfurter goes to the point of showing it to be a tenable view that national unity depends upon, or is enhanced by, having school children salute the flag. It does not go beyond that point. It falls far short of proving that national unity or any other desirable result will come from compelling school children publicly to affirm unfelt loyalties. All of the eloquence by which the majority extol the ceremony of flag saluting as a free expression of patriotism turns sour when used to describe the brutal compulsion which requires a sensitive and conscientious child to stultify himself in public. The decision in the case is disheartening for three reasons; first, because it is a departure from a long line of decisions protecting fundamental civil liberties; second, because it is an eight-to-one decision; third, because the opinion of the Court was written by Mr. Justice Frankfurter, long associated in the public mind with the vigorous defense of civil liberty.

In sharp contrast to the flag salute case is the case of *Cantwell v. Connecticut*,<sup>46</sup> also involving an issue of religious liberty. The case arose on these facts. Cantwell and his two sons are members of the sect "Jehovah's Witnesses." They went from house to house with books and pamphlets on religious subjects and with a portable phonograph with records describing the content of the books. Upon being admitted to a house, the Cantwells asked permission to play the records, offered the books and pamphlets for sale, and solicited funds for publishing the printed matter. None of the persons visited belonged to Jehovah's Witnesses. One of the

<sup>46</sup> 310 U.S. 296, 1940.

records described a book called "Enemies," which contained an attack upon the Catholic religion. Besides the house to house visits, Cantwell stopped two persons on the street, and asked and received permission to play a record. He played the record "Enemies." It happened that the two men listening were Catholics. They were incensed at the record, and testified that they were tempted to strike Cantwell but that in view of their protests he went away. He was neither truculent nor argumentative, and there was no disorder or violence. The Cantwells were convicted on two indictments. One charged violation of a state statute making it a crime for any person to solicit or canvass from house to house for any religious, charitable, or philanthropic cause without securing the prior approval of the secretary of the public welfare council, who is authorized to determine whether the cause is a religious one, is bona fide, and conforms to reasonable standards of efficiency and integrity. The Cantwells had not secured such approval. The other charge was against the elder Cantwell, who played the records on the street, for the common law offense of inciting a breach of the peace. In a unanimous decision, the Court, speaking through Mr. Justice Roberts, held that conviction on both counts denied due process of law under the Fourteenth Amendment by abridging freedom of communication and freedom of religion. The state may surround the solicitation of funds for religious and charitable purposes with reasonable regulations, but to require prior approval by the secretary of the public welfare council, an approval based upon the exercise of judgment and opinion, constitutes a "censorship of religion as a means of determining its right to survive," and denies due process. The defect is not corrected by the fact that arbitrary, capricious, or corrupt action by the secretary is subject to review by the courts. The previous restraint vitiates the provision. To construe Cantwell's conduct on the public street as incitement to breach of the peace is also to abridge his freedom to communicate his views peacefully and to exercise his religious liberty. There was no assault, threat of bodily harm, discourtesy, or personal abuse upon Cantwell's part. While his language, or that of the phonograph record, was provocative and aroused resentment, it was not obscene, profane, or abusive. It fell within the area within which expression may be given to differences of religious opinion, and it was accordingly protected by the due process clause. It raised no clear and present menace to public peace and order.

Three due process cases dealt with the rights of persons accused of crime. Two were "third degree" cases and set aside convictions based on confessions secured by brutal and unlawful methods. In *Chambers v. Florida*,<sup>47</sup> the record showed that Chambers and three other young Negroes charged with the murder of a white man were kept in custody and

<sup>47</sup> 309 U.S. 227, 1940.

questioned, one by one, with no opportunity between grillings to obtain rest or sleep, for five days and nights. It was made abundantly clear to them by the sheriff and his aides that the questioning would continue until they made "adequate" confessions. Speaking through Mr. Justice Black, the Court said: "We are not impressed by the argument that law enforcement methods such as those under review are necessary to uphold our laws. . . . Due process of law, preserved for all by our Constitution, commands that no such practice as that disclosed by this record shall send any accused to his death." A similar result was reached upon a very similar set of facts in the case of *White v. Texas*,<sup>48</sup> in which Mr. Justice Black again spoke for the Court. In *Avery v. Alabama*,<sup>49</sup> the question was presented whether the accused had been denied his constitutional right of assistance of counsel. Avery was arrested for murder. He was arraigned on March 21, 1938. Two local attorneys were appointed by the court to defend him; pleas of not guilty were entered, and the presiding judge set his trial for March 23rd. The case was actually called for trial on the 24th, at which time his attorneys asked for a continuance on the ground that they had not had adequate time and opportunity to prepare his defense. The trial proceeded, however, and resulted in a verdict of guilty and the imposition of the death penalty. A new trial was sought on the ground of the failure to allow the requested continuance, but this was denied. Upon appeal, the supreme court of the state concluded that the trial judge had not abused his discretion in failing to continue the case. The Supreme Court, speaking through Mr. Justice Black, agreed that the benefit of assistance of counsel guaranteed by the Fourteenth Amendment had not been denied. The appointment of counsel had not been a mere formality, since the attorneys for the accused had contested every step of the way to a final conclusion of the case. The trial was held in a small rural community where witnesses and information were readily accessible, and the hearing on the motion for a new trial disclosed nothing to indicate that counsel could have done more for the accused than they did even if they had had more time.

2. *Police Power*. Minnesota's "psychopathic personality" statute was upheld in *Minnesota ex rel. Pearson v. Probate Court*.<sup>50</sup> This interesting act defines "psychopathic personality" as meaning "the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of his acts, or a combination of any such conditions, as to render such person irresponsible for his conduct with respect to sexual matters and thereby dangerous to other persons." The state supreme court construed this statute to mean that there must be proof of a "habitual course of misconduct in sexual matters" on the part of

<sup>48</sup> 310 U.S. 530, 1940.

<sup>49</sup> 308 U.S. 444, 1940.

<sup>50</sup> 309 U.S. 270, 1940.

persons against whom a proceeding under the statute is directed, which has shown "an utter lack of power to control their sexual impulses." With certain qualifications, "psychopathic personalities" are to be dealt with by the state under the general laws relating to the insane. There are rigid procedural requirements for the protection of individuals brought under the law. Speaking through Chief Justice Hughes, the Court held that the act, as construed by the state court, was not too vague and indefinite to be valid under due process of law. The definitions employed are as "susceptible of proof as many of the criteria constantly applied in prosecutions for crime." The law does not deny equal protection because it does not include within its reach all emotionally unstable persons. The legislature may recognize degrees of harm and may confine its restrictions to those cases where the need is deemed to be clearest. There is no lack of procedural due process.

3. *Regulation of Business.* A Virginia statute forbids contracts of insurance by companies authorized to do business within the state "except through regularly constituted and registered resident agents or agencies of such companies." Such resident agents are entitled to receive the usual commissions allowed on such contracts, and are forbidden to share more than half of such commission with a non-resident broker. Insurance is normally sold either through agents or brokers. The agent is tied to his company. He builds up local good will, may finance premiums, assist in filing claims, and generally occupies a personal relationship between the insured and the company. The broker is not tied to one company and usually handles large-scale business. He secures large contracts by bargaining for the best terms from competing companies. He deals frequently through the medium of the master or "hotchpotch" policy, whereby the insured secures a better rate by pooling all his risks. Commissions may be sliced in handling this sort of business, and it is likely to be placed with companies operating in the large insurance centers. The Virginia statute requires the broker to operate in Virginia through a resident agent to whom the full customary commission is paid. Master policies and the concentration of insurance business in one large concern are thus discouraged by decentralizing it through the local agent and by increasing the costs. Osborn and others sought to enjoin the enforcement of the statute on the ground that it denies due process of law by restricting their freedom of action outside the state of Virginia and by subjecting that freedom of action to financial burdens. In a six-to-three decision, the Court, speaking through Mr. Justice Frankfurter, upheld the statute. This is the case of *Osborn v. Ozlin*.<sup>51</sup> The state has not sought to control the making of contracts beyond her borders. She has control over the issuance of insurance in Virginia and may exercise that control through the regulations here set up. Resident agents render services to insured persons which are more

<sup>51</sup> 310 U.S. 53, 1940.

valuable and necessary than those rendered by brokers. The legislature is entitled to its judgment that these more valuable services justify the requirement that insurance must all pass through the hands of such resident agents. This judgment is not arbitrary, and the judicial function does not therefore extend to the upsetting of it and the formation by the Court of an independent judgment. Mr. Justice Roberts dissented in an opinion in which Chief Justice Hughes and Mr. Justice McReynolds concurred. He said: "The plain effort of Virginia is to compel a non-resident to pay a resident of Virginia for services which the latter does not in fact render and is not required to render." This amounts to the exercise by the state of control over transactions beyond her jurisdiction.

The state of Texas has a statute establishing a system for the regulation of the production of oil. The administration of this is placed in the hands of the Railroad Commission. In 1938, the Commission issued a proration order covering the East Texas oil field. By this order each well was allowed to produce 2.32 per cent of its hourly productive capacity under unrestricted flow. This rule did not apply, however, to "marginal wells," which, if their low productive capacity were reduced, would have to be prematurely abandoned, and they were allowed to produce up to twenty barrels per day. These marginal wells are so numerous that of the total allowable output of all the wells in the East Texas area they were permitted to produce 385,000 barrels out of a total of 522,000 barrels. The application of the hourly potential formula to the other and normal wells allowed them to produce about twenty-two barrels per day. The respondent company sought to enjoin the enforcement of the proration order on the ground that it takes the company's property without due process of law by allowing the marginal wells to draw off more than their fair share of the subsurface oil deposits. In an opinion by Mr. Justice Frankfurter, in *Railroad Commission v. Rowan & Nichols Oil Company*,<sup>52</sup> the Court upheld the validity of the order and the statute. The situation is a very complex one. "Underlying these claims is as thorny a problem as has challenged the ingenuity and wisdom of legislatures." According to the conventional doctrine prevailing in Texas, the holder of an oil lease "owns" the oil in place beneath the surface. But by a further "rule of capture" that right is subject also to his neighbor's right to draw off the oil beneath the surface of the neighbor's land. "Every lease-holder, that is to say, is at the mercy of all those who adjoin him, since oil is a fugacious mineral, the movements of which are not confined by the artificial boundaries of surface tracts." For years, Texas has been trying to find an equitable formula by which to control the allowable production of oil from a common subsurface supply. The present statute and the order of the commission constitute an intelligent effort to solve this problem. The Court should be reluctant to substitute its judgment for that of the legislature on a matter so complex.

<sup>52</sup> 310 U.S. 573, 1940.

"Certainly in a domain of knowledge still shifting and growing, and in a field where judgment is therefore necessarily beset by the necessity of interferences bordering on conjecture even for those learned in the art, it would be presumptuous for courts, on the basis of conflicting expert testimony, to deem the view of the administrative tribunal, acting under legislative authority, offensive to the Fourteenth Amendment. . . . It is not for the Federal courts to supplant the Commission's judgment even in the face of convincing proof that a different result would have been better." Mr. Justice Roberts dissented. He protested against the Court's "abdicating its jurisdiction" to test the commission's order. There was adequate evidence to support the finding that the company's property was being taken without just compensation. By the order of the commission, "the worst property is raised to the level of the best and the best is lowered to the level of the worst." The relief asked for should have been granted. The Chief Justice and Mr. Justice McReynolds concurred in the dissent.

4. *Due Process in Taxation.* A Minnesota statute lays a tax on every railroad company owning or operating lines within the state of five per cent on the gross earnings derived from its operations within the state. This is in lieu of all other taxes. The Illinois Central owns no lines in Minnesota, but leases thirty miles of trackage there. It owns or operates 5,000 miles in other states. The railroad's operations in Minnesota produced income and debits resulting from the exchange of its freight cars with those of other roads operating in Minnesota, the using road being charged a dollar per day for each car. Offsetting these credits and debits against each other, the Illinois Central had a credit balance during the period involved of \$2,503,353. The amount of this income attributed to Minnesota business for purposes of the tax was determined by computing the ratio of each using railroad's Minnesota revenue freight car miles to its system car miles. The Illinois Central claims that the tax imposed on it by this formula denies it the equal protection of the law and due process of law. In a unanimous decision, the Court, speaking through Mr. Justice Douglas, rejected these contentions and upheld the tax. This is the case of *Illinois Central R. Co. v. Minnesota*.<sup>53</sup> The apportionment of the tax to the Minnesota car mileage may not be a mathematically accurate formula for distributing the incidence of the tax, but it is at least approximate enough to be practical and fair. The railroad claims denial of equal protection because while it has but thirty miles of trackage in Minnesota it is liable to the tax as described, while railroads having no trackage in the state escape the tax entirely although they may have substantial revenues from the rental of cars used in Minnesota. This does not amount to arbitrary discrimination. All railroads operating in Minnesota are treated alike; they are taxed by the same formula. The roads which have no mileage in the state have not submitted themselves to the jurisdiction of the state.

<sup>53</sup> 309 U.S. 157, 1940.

The Court rejects the contention that the tax invalidly results in double taxation, since that is no longer a constitutional objection, even if true. Nor does the tax violate the commerce clause, since the state has a clear right to tax property used in interstate commerce.

## 2. EQUAL PROTECTION OF THE LAW

In 1902, in *Connally v. Union Sewer Pipe Company*,<sup>54</sup> the Court, in an opinion by Mr. Justice Harlan, held that the Illinois antitrust act of 1893 was unconstitutional as denying the equal protection of the laws because it did not apply to agricultural products or livestock in the hands of the producer or raiser. The present antitrust act of Texas contains a virtually identical exemption. In *Tigner v. Texas*,<sup>55</sup> the appellant was indicted for taking part in a conspiracy to fix the price of beer. He alleged the invalidity of the statute on the authority of the *Connally* case. If that case still states the law, his contention is sound and the indictment against him must be dismissed. The Court, speaking through Mr. Justice Frankfurter, held the Texas statute valid, observing that "*Connally's* case has been worn away by the erosion of time, and we are of opinion that it is no longer controlling." Farmers are scattered and "inured to habits of individualism." The legislature may reasonably conclude that combinations of farmers and live-stock producers either present no serious threat to the community, or at least a threat different in character and calling for different action from that of combinations of industrialists. "The equality at which the 'equal protection' clause aims is not a disembodied equality. . . . The Fourteenth Amendment enjoins 'the equal protection of the laws,' and laws are not abstract propositions. . . . The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same."

## 3. PRIVILEGES AND IMMUNITIES OF CITIZENS OF THE UNITED STATES

In *Colgate v. Harvey*<sup>56</sup> in 1935, a majority of the Court broke with the doctrine of the *Slaughterhouse Cases*<sup>57</sup> and held that the right to carry on business across state lines is one of the privileges and immunities of citizens of the United States protected from abridgment by the Fourteenth Amendment. Mr. Justice Stone dissented sharply. How much further the majority would have been willing to push this new interpretation of the privileges and immunities clause we may never know, for in *Madden v. Kentucky*<sup>58</sup> the Court overruled *Colgate v. Harvey*. The case involved a Kentucky statute imposing on Kentucky citizens an ad valorem tax of fifty cents per hundred dollars on bank deposits kept outside the state, and a tax of ten cents per hundred dollars on those kept within the state. The plaintiff urged that this discrimination denied the equal pro-

<sup>54</sup> 184 U.S. 540, 1902.

<sup>55</sup> 310 U.S. 141, 1940.

<sup>56</sup> 296 U.S. 404, 1935.

<sup>57</sup> 16 Wallace 86, 1873.

<sup>58</sup> 309 U.S. 83, 1940.



tection of the laws and abridged the privileges and immunities of citizens of the United States. Speaking through Mr. Justice Reed, the Court held the tax valid. The difference between the two tax rates does not amount to arbitrary classification. The lower rate on deposits kept in the state may be justified on the ground that the local banks collect for the state its tax on intangibles, thus making the tax on local deposits almost self-enforcing. The tax on money kept outside the state is more difficult and costly to collect. The privileges and immunities clause of the Fourteenth Amendment does not lend federal protection to the privileges and immunities which spring from state citizenship. "We think it quite clear that the right to carry out an incident to a trade, business or calling such as the deposit of money in banks is not a privilege of national citizenship. . . . Appellant relies upon *Colgate v. Harvey* as a precedent to support his argument. . . . In view of our conclusions, we look upon the decision in that case as repugnant to the line of reasoning adopted here. As a consequence, *Colgate v. Harvey* must be and is overruled." Chief Justice Hughes concurred on the ground that the classification set up in the act was reasonable. Mr. Justice Roberts dissented, adhering to the views expressed in his opinion for the majority in *Colgate v. Harvey*. Mr. Justice McReynolds joined in the dissent.

## II. IMPAIRMENT OF THE OBLIGATION OF CONTRACTS

New Jersey statutes passed in 1925, provided that shares in home loan associations could be withdrawn under certain procedures, and that such shares must be repaid by the association within six months of notice. In 1932 these statutes were amended, to protect the solvency of the associations, by prohibiting the withdrawal of shares under certain circumstances, and making withdrawal at any time much more difficult. In *Veix v. Sixth Ward Building & Loan Association of Newark*,<sup>59</sup> the Court, in an opinion by Mr. Justice Reed, held that the 1932 amendments did not impair the obligation of the contracts embodied in the purchase of shares prior to that date. Veix bought shares in 1928 and 1929, and in 1939 he sued the association for the withdrawal value of the shares, a suit barred by the statute of 1932. The obligation of the association under the original statutes to permit the withdrawal of shares was subject to the "paramount police power." All contracts are made subject to the police power. The police power is not confined to the protection of health, morals, and safety, but extends to economic needs as well. The act of 1932 may have been passed as an emergency measure to meet what was thought to be a temporary need; but it may pass from a temporary to a permanent piece of legislation without impairing the obligation of contracts.

<sup>59</sup> 310 U.S. 32, 1940.

## III. FEDERAL AND STATE RELATIONS

## 1. STATE TAXATION OF FEDERAL AGENCIES

No new principles emerged from the four cases involving the state taxation of federal agencies. A Maryland statute levies a tax upon every recorded mortgage at the rate of ten cents per \$100 of the amount of the debt. In *Pittman v. Home Owners' Loan Corporation*,<sup>60</sup> this tax is held inapplicable to a mortgage held in the state by the H.O.L.C. The Home Owners' Loan Act provides that the corporation, "its franchise, capital, reserves and surplus, and its loans and income shall be exempt from all state or municipal taxation." The mortgage was an indispensable element in the lending operations of the corporation. Congress could validly exempt the corporation and its activities from state taxation. In *Buckstaff Bath House Company v. McKinley*,<sup>61</sup> the state of Arkansas was allowed to collect from the petitioner its tax for the benefit of the state unemployment fund, although he operates under lease from the national government, a bath house on the government reservation known as Hot Springs National Park. Under the statutes defining jurisdiction over the reservation, the state tax is clearly applicable to the petitioner. Is he exempt under the section of the federal Social Security Act which relieves "an instrumentality of the United States" of such burden? The Court held that he is not such an instrumentality. The fact that he conducts a private business for profit under lease from the federal government does not make him an instrumentality of government. *Tradesmens National Bank of Oklahoma City v. Oklahoma Tax Commission*<sup>62</sup> held that the federal statutes permitting non-discriminatory state taxation of national banks allows the state to levy a franchise tax on national banking associations measured by their net income, including interest on tax-immune federal securities. The tax does not hit the tax-exempt securities themselves, and there is no discrimination against the national banks. In *Colorado National Bank v. Bedford*,<sup>63</sup> the Court held that the state could validly require the bank to collect for the state a tax upon the value of safe deposit box services rendered to its customers. Since the user of the safe deposit box pays the tax, it is not a burden upon a federal instrumentality.

## 2. STATE TAXATION AND INTERSTATE COMMERCE

Two cases of importance involved the applicability of the New York City sales tax to the sale of commodities in interstate or foreign commerce. This tax is laid upon purchasers for consumption of tangible personal property at the rate of two per cent of the sale price. The seller is required to collect the tax, and must pay it whether he collects it or not. In *McGoldrick v. Gulf Oil Corporation*,<sup>64</sup> the city attempted to collect the

<sup>60</sup> 308 U.S. 21, 1939.<sup>61</sup> 308 U.S. 358, 1939.<sup>62</sup> 309 U.S. 560, 1940.<sup>63</sup> 310 U.S. 41, 1940.<sup>64</sup> 309 U.S. 414, 1940.

tax from the company upon the sale of certain oil. This oil was imported from abroad in the form of crude petroleum, was placed under bond by the customs authorities, was refined into fuel oil by the company, and was finally withdrawn from bond and sold in New York harbor to foreign bound vessels as ships stores to be used in fueling those vessels. The whole transaction was governed by provisions of the federal revenue acts and regulations of the Treasury. The imported oil was exempt from federal tariff duties. Embodied in this entire arrangement was a congressional policy, evidenced by the legislative history of the revenue acts, to "encourage importation of the crude oil for such use and thus to enable American refiners to meet foreign competition. . . . The purpose of the sale of tax-free oil to vessels engaged in foreign commerce was to promote that commerce." These policies are clearly within the constitutional power of Congress to regulate foreign commerce, and the New York City sales tax would cripple or defeat that policy. To allow the state to impose such a tax would lessen the competitive advantage conferred on the importer by Congress, since such tax might equal or exceed the remitted import duty. The clear intention of Congress is to prevent the oil from becoming at any stage a "part of the common mass of taxable property within the state." The sales tax is therefore inapplicable as "an infringement of the congressional regulation of commerce." The opinion of the Court was written by Mr. Justice Stone.

In contrast to this case is that of *McGoldrick v. Berwind-White Coal Mining Company*,<sup>66</sup> in which the New York City sales tax is held applicable to coal brought into New York City from Pennsylvania and there sold to public utility and steamship companies. In another opinion by Mr. Justice Stone, the majority of the Court find that the tax places no invalid burden upon interstate commerce. "It was not the purpose of the commerce clause to relieve those engaged in interstate commerce of their just share of state tax burdens, merely because an incidental or consequential effect of the tax is an increase in the cost of doing the business. . . ." The local sales tax is not aimed at interstate commerce, nor does it discriminate against it. Its effect upon interstate commerce is similar to that of the state "use" taxes sustained in earlier decisions. Chief Justice Hughes dissented in an opinion in which Justices McReynolds and Roberts concurred. He regarded the tax as a direct burden upon interstate commerce, and therefore void, even though non-discriminatory. The tax is laid upon the delivery of the coal, which is an essential part of the interstate commerce transaction. "The tax as here applied is open to the same objection as a tariff upon the entrance of the coal into the state of New York, or a state tax upon the privilege of doing an interstate business, and in my

<sup>66</sup> 309 U.S. 33, 1940.

view it cannot be sustained without abandoning principles long established and a host of precedents soundly based."

An Arkansas statute forbids the entry into the state of any automobile or truck carrying over twenty gallons of gasoline to be used by the vehicle as motor fuel until the state tax of six and one-half cents per gallon has been paid. This requirement is held in *McCarroll v. Dixie Greyhound Lines, Inc.*,<sup>66</sup> to be an invalid burden upon interstate commerce. The company operates passenger busses from Memphis, Tennessee, across the state of Arkansas to St. Louis, Missouri, and back again. The total mileage involved each way is 342 miles—three in Tennessee, 78 in Arkansas, 261 in Missouri. The busses run about five miles on a gallon of gasoline. One gallon of gasoline is used in Tennessee, sixteen in Arkansas, and fifty-one in Missouri. When the busses arrive at the Arkansas line they usually have in their tanks about seventy-seven gallons of gasoline, of which sixteen will be used within the state. But in order to enter the state they must pay six and one-half cents upon every gallon of this amount above the twenty exempted by the statute. The Court, speaking through Mr. Justice McReynolds, held that this tax cannot be regarded as a reasonable compensation exacted by the state of Arkansas for the use by the company of its highways. Such a fair charge the state is clearly entitled to make. However, in the words of the lower court: "We are unable to comprehend how the use of the highways of one state can appropriately be measured by the amount of gasoline carried in the fuel tank of an interstate carrier for use upon the highways of another state." Mr. Justice Stone wrote a concurring opinion in which Justices Roberts and Reed joined. Mr. Justice Black dissented in an opinion in which Justices Frankfurter and Douglas concurred. In his view, the tax was not an unreasonable charge for the use of the state's highways, and the other questions raised by it should be left "for consideration of Congress in a nation-wide survey of the constantly increasing barriers to trade among the states."

The state of Tennessee lays an ad valorem tax upon all property in the state. Ordinary property is valued for purposes of this tax by county officials. The property of public service corporations is assessed by the Railroad and Public Utilities Commission, which is directed to ascertain the "actual cash value" of the corporate property situated in the state. The property of the Nashville, C. & St. L. Railway was assessed by the commission by a formula which placed a value upon the railroad's entire system, with certain deductions, and then calculated the share of this total value attributable to Tennessee by taking the ratio which the mileage of the road in Tennessee bears to the total mileage. In *Nashville, C. & St. L. Railway v. Browning*,<sup>67</sup> the Court, speaking through Mr. Justice

<sup>66</sup> 309 U.S. 176, 1940.

<sup>67</sup> 310 U.S. 362, 1940.

Frankfurter, held the state tax valid. The commerce clause is not violated by the apportionment of the tax on the railroad's property according to mileage. While the formula may not be mathematically accurate, it is sufficiently so to make it unwarrantable for the Court to set aside the combined judgment of the state commission and state courts that the apportionment is equitable. The tax was attacked under the Fourteenth Amendment on the ground that while the property of public service companies is appraised at its full cash value, other property in the state has for forty years been systematically and intentionally undervalued. This, however, does not deny the equal protection of the laws. While some states have tax uniformity clauses in their constitutions which would forbid this discrimination in the assessment of property, the Fourteenth Amendment imposes no such rule of uniformity. It permits the state to apply different yardsticks to different classes of property. The long-established practice of undervaluing ordinary property for purposes of taxation has embodied in the law of the state a traditional discrimination, which the state could have written into its taxing statutes had it seen fit to do so.

### 3. STATE POLICE POWER AND INTERSTATE COMMERCE

*Maurer v. Hamilton*<sup>68</sup> involved a conflict between a state safety regulation applicable to interstate trucks and an order of the Interstate Commerce Commission issued under the supposed authority of the Federal Motor Carrier Act of 1935. A Pennsylvania statute forbids the operation over the highways of the state of any motor vehicle "carrying any other vehicle over the head of the operator of such carrier vehicle." This was aimed at the specially constructed trucks on which new automobiles are transported. Evidence collected by officers of the state tended to show that this mode of transportation was dangerous in many ways. Maurer sought an injunction against the enforcement of this regulation against him. Before he brought his action, the Interstate Commerce Commission, acting under the provisions of the Motor Carrier Act of 1935, had issued certain regulations with respect to the safety of operation and equipment of common and contract carriers in interstate commerce. These regulations contained no provisions specifically applying to cars carried over the cabs of the transporting vehicles. In 1939, however, the commission issued a report of an investigation of "car over cab operations" in which it announced the conclusion that evidence failed to show such operations to be unsafe, and found no reasons for forbidding them. "The operations of vehicles so equipped are therefore permitted by the existing regulations, and there is no need for change." In a unanimous decision, the Court, speaking through Mr. Justice Stone, held that the commission had

<sup>68</sup> 309 U.S. 598, 1940.

exceeded its authority and that the Pennsylvania statute was validly enforceable against interstate carriers operating in the state. The Pennsylvania statute should be classed as a regulation of the "sizes and weight" of motor vehicles, rather than as a regulation of the "safety of operation and equipment." The legislative history of the Motor Carrier Act of 1935 shows that Congress intended to give the Interstate Commerce Commission authority over the latter but not over the former. An early version of the bill in the Senate conferred on the commission the power to regulate sizes and weights of vehicles, but this power was withdrawn before the bill became law. The power therefore was not given to the commission, and remains in the hands of the states. This result rests upon a statutory construction, and Congress might change it if it so desired.

## AMERICAN GOVERNMENT AND POLITICS

Third Session of the Seventy-sixth Congress, January 3, 1940, to January 3, 1941, The *sine die*<sup>1</sup> adjournment of Congress on January 3 brought down the curtain on the longest<sup>2</sup> and one of the most hectic and unique sessions in American history. As early as January 3, 1940, when the session began, the leaders of the House and Senate were looking forward to a program involving much controversy. But it is doubtful whether anyone anticipated a session drawn out over 367 days, during which \$19,069,548,775 would be appropriated and 941 laws enacted.<sup>3</sup> Many important bills were pending on the Senate and House calendars on the opening day, and measures on trade treaties, labor, agriculture, taxation, and debt limitation were certain to arise. Many congressmen rightly guessed that much defense legislation would be enacted. Around the Capitol during the opening weeks of the session, nevertheless, there was much sentiment for a more nearly balanced budget and for a curtailment of national expenditures. Barrages of criticism were thrown up against a continuation of the extensive executive powers previously conferred on the President, and particularly urging removal of certain governmental regulations on individuals or businesses. Pleas were made for a return to "congressional government."<sup>4</sup> And many members urged an early adjournment in order that representatives and senators might go home for campaign purposes.

Before the close of the session, however, the members of both houses experienced trials which were indeed a strain on the very existence of the American form of government. The President apparently anticipated much trouble ahead and envisaged a continuation, and even an expan-

<sup>1</sup> No concurrent resolution for *sine die* adjournment was adopted. In accordance with the Constitution, Congress died automatically, each house adjourning separately.

<sup>2</sup> The next longest session (65th Congress, 2nd session) ran for a period of 354 days.

<sup>3</sup> The activity of the session was tremendous. The *Congressional Record* ran to 21,846 pages, and committee hearings, unusually extensive, to between 65,000 and 75,000 pages.

<sup>4</sup> Representative Luce, speaking to the House as late as December 16, 1940, stated: "... Of supreme importance, under both Republican and Democratic control, has been the steady march toward subordination of the legislative branch of the government. ... With the World War, the President became, for the time being, supreme. After the war, the Senate reasserted itself. Legislative subordination, however, had become so acceptable to Congress as a whole that it continued to look to the President for leadership. The habit grew, until now almost no important bill is passed upon save upon administrative initiative or with previous approval of the Chief Executive. The effect of this has been to diminish the importance of Congress." *Cong. Rec.*, 76th Cong., 3rd Sess., p. 21513 (hereafter references to the *Record* will give only page numbers).

sion, of executive powers rather than a curtailment of them. In his annual message on the opening day, he urged that the United States should not play the rôle of "an ostrich" in regard to foreign affairs and foreign wars, but "see the possibilities for our children if the rest of the world comes to be dominated by concentrated force alone—even though today we are a very great and a very powerful nation. . . ." Beyond this, he recommended a continuation of the trade agreements program, taxes to provide an increased national defense program, a solution of the unemployment problem, and promotion of national unity.

From January to May, the legislative program consisted mainly of passing the annual routine appropriation measures, most of which were enacted at figures below budget estimates, and all of which, up to that time, passed the House at lower figures. But in May, Europe became an erupting volcano, shaking the earth and affecting the national life and existence of the peoples of the Western hemisphere. Consequently, within the span of less than a month, the legislative picture was wholly changed and all planned economies were thrown to the winds. All other business was temporarily excluded, and the defense program was enacted at record-breaking rapidity.

By the middle of October, the legislative program of the session had been completed, but Congress would not adjourn *sine die*. The leadership made four or five attempts to procure adjournment, but to no avail. Seldom was there a quorum of either house in Washington; but neither was willing to leave the international situation to the President single-handed. During the last three months, the two bodies pursued a program of three-day recesses without transacting any major business.<sup>5</sup>

*Organization.* The more important changes in congressional leadership during the session took place after the controversial legislation had been disposed of. Most of the legislative measures acted on after May consisted of defense measures on which the membership generally voted as a unit, certainly with little regard for party lines. In November, the Senate elected William H. King president *pro tempore* and Walter F. George chairman of the Foreign Relations Committee, both replacing Key Pittman, who died on November 10, 1940. All told, about 20 other changes were made in standing committee personnel, involving some 13 different committees.

On the House side, Sam Rayburn, who had been floor leader, became speaker of the House about the middle of September, following the death of Speaker Bankhead, and John W. McCormack, who had been fourth ranking majority member of Ways and Means, was promoted to floor

<sup>5</sup> After October 8, very little was done except for disposing of the conference report on the Ramspeck Civil Service Bill (H.R. 960) and Senate action on the Walter-Logan Administrative Court Procedure Bill (H.R. 6324).



leadership. Four changes in committee chairmanships took place,<sup>6</sup> and from 75 to 100 changes in committee personnel were made because of deaths and resignations.

*Procedure: General Aspects.* Procedure in the House and Senate was much the same as in the first session. Some bills were debated for longer periods of time, while other major measures were disposed of more hurriedly. The Senate and the House debated 80 and 115 bills respectively for three or more pages each of the *Congressional Record*. Eight in the House and 11 in the Senate yielded over 100 pages each. The most debated measure was the Compulsory Military Training Bill (S.4164), filling over 300 pages of the House proceedings and nearly 700 pages of the Senate proceedings. The House broke all precedents in its use of special rules, and the Senate regularly resorted to the practice of limiting debate under unanimous consent.<sup>7</sup> But no important rules were changed, and no significant innovations in procedure were made. The House and Senate were actually in session 201 and 192 calendar days, respectively; but a great number of the sittings of each were not used for transacting legislative business.

*Procedure in the Senate.* Senate procedure cannot be completely appraised unless attention is called to the legislative abilities and activities of Senator Barkley, floor leader. Mr. Barkley did not wield control over the actions of the Senate quite to the extent of some of his predecessors, but as majority leader he enjoyed much influence and did a good job of directing the legislative program toward granting the requests of the Administration. As evidence of the absolute positiveness with which he talked about what the program was going to be, one of his characteristic statements to the Senate may be noted: "Whether I move that the Senate adjourn or recess may depend on how much time is wasted on extraneous 'bunk' instead of considering the bill which is now before the Senate."<sup>8</sup>

Thus, under his leadership the program for the session, with the exception of a few bills, was pretty much streamlined for speed. Eleven bills were debated for four or more days each. The Extension of the Trade

<sup>6</sup> Fulmer of South Carolina replaced Jones of Texas as chairman of the Committee on Agriculture; Kramer of California, who had been fourth ranking majority member of the Committee on Patents, was promoted to chairmanship of that committee, replacing Sirovich of New York; Cochran of Missouri became chairman of the Committee on Accounts, filling the vacancy created by the resignation of Warren of North Carolina; and O'Leary of New York took over the chairmanship of the Committee on Executive Expenditures, left vacant by Cochran of Missouri resigning that post to become chairman of the Committee on Accounts.

<sup>7</sup> This method of limiting debate in the Senate is more effective than one normally thinks. Requests for such limitation, usually made by the majority floor leader, carry with them the pressure and force of the majority party's organization.

<sup>8</sup> P. 4910.

Treaties program (H.J. Res. 407) for an additional three years and the Extension of the Hatch Act (S.3046) were debated for 10 days each, and the Compulsory Military Training Bill (S.4164) was debated 13. Many important measures and hundreds of minor bills were disposed of after a minimum of consideration. For example: the bill (H.R. 10412) authorizing the appropriation of \$150,000,000 for National Defense Housing was passed after a debate filling only three pages of the *Record*, without a roll call vote.<sup>9</sup> The joint resolution providing \$338,000,000 for the acquisition of land and for military post construction (H.J. Res. 607) was ordered reported within 15 minutes after it was passed by the House on September 19. The bill passed the Senate on the subsequent day after about five minutes of debate in which three senators took part.<sup>10</sup> On September 27, the Senate passed 98 bills; on September 30, a total of 107; and the high-water mark was reached on April 10, when 157 measures were approved. The speed and looseness with which the leadership shot some bills through was called to the attention of the Senate on several occasions.

As usual, the daily attendance in the Senate was rather small; in the latter part of the session, particularly in campaign-time, it was difficult to obtain a quorum in order to carry on business. In several instances the clerk was forced to call the roll more than once, as well as to call it rather slowly in anticipation of a quorum developing before the call had been completed. The chance of getting a quorum seemed so hopeless on one occasion after 25 minutes of trial that Senator Thomas of Oklahoma, who had made the particular point of no quorum, asked the presiding officer: "Would it be in order for me to ask that the demand for a roll call be vacated, so that we may proceed . . . ?"<sup>11</sup> Finally the senators present adopted a motion to send out the sergeant-at-arms to "request the attendance of absent senators."

One of the most interesting political maneuvers in the Senate during the session to block the consideration of a certain bill was the action of Senator Clark on February 19, when a bill to prohibit the advertising of alcoholic beverages by radio (S.517) was about to be called up. On that day, bills were being called up under unanimous consent, and, without objection, passed. Senator Clark was opposed to the particular bill, and to prohibit the Senate from reaching it on the calendar, had demanded a quorum call on four different occasions, delaying the procedure. Finally when he saw that the bill would otherwise be reached he put an end to it for the remainder of the session by offering the Anti-Lynching Bill as an amendment. He knew this action would start a filibuster.<sup>12</sup>

<sup>9</sup> Pp. 19736-19739.

<sup>10</sup> Pp. 18754-18755.

<sup>11</sup> P. 19634. The Vice-President replied: "The Senate can do nothing in a legislative way without a quorum. The want of a quorum has been developed. Therefore, there is nothing for the chair to do except to direct the clerk to call the names of the absent senators."

<sup>12</sup> Pp. 2473-2474.

The chair made a rather unusual and interesting ruling during consideration of the Compulsory Military Training Bill. Senator Clark had made a point of order against further proceedings until a quorum was obtained. The presiding officer inquired of Senator Downey, who occupied the floor at the moment, if he would yield to allow Senator Clark to make his motion. Senator Downey stated that he would "prefer not to yield for that purpose." Whereupon Clark replied: "I insist on the constitutional right to have a quorum present when business is transacted. I shall be glad to have the chair rule." The chair ruled: "The chair is advised that the senator from California does not have to yield for the purpose of suggesting the absence of a quorum."

*Procedure in the House.* No new faces appeared in the group of leaders determining the House program, and procedure was much like that of other recent sessions. Any differences were due primarily to the emergency national defense program. Many bills were considered under general debate from one to five hours each, and then read under the five-minute rule for amendments; a few, like the Compulsory Military Training Bill (H.R. 10132 and S.4164), consumed a whole week. The full consideration of many bills (adoption of a special rule granting the measure the right of way for immediate consideration, general debate, reading for amendments, and voting) extended over a period of from one to three days each; in fact, more bills were thus disposed of in the House than in the Senate. Only a few bills, however, were discussed for more than three days. Nearly nine-tenths of the bills and resolutions passed by the House were called up from one of the special calendars<sup>13</sup> or by unanimous consent and after a few minutes' discussion passed without objection. On July 2, the House passed 133 bills, the highest number on any one day during the year.

During the session, 604 private bills were reported to the House and placed on the Private Calendar. All but 21 of them were disposed of, 390 becoming law. Of the 135 bills and resolutions placed on the House Calendar, seven died there. Of the 565 measures placed on the Union Calendar, 80 died there, including 12 presidential messages and House reports made in pursuance of certain resolutions to that effect. Of the 467 measures placed on the Consent Calendar, 447 were acted on, leaving 20 on the calendar.

Calendar Wednesday was invoked on eight different occasions, with 22 committees called upon. Four committees responded to the call, presenting 10 bills for consideration, of which the House passed eight. The Committee on Public Lands called up six of the bills. The other committees responding to the calls were Post Office and Post Roads, Indian Affairs, and Territories.

<sup>13</sup> The calendars of special business include: Private, Consent, District, Calendar Wednesday, Suspension of the Rules, and the like.

The suspension of the rules procedure was invoked on five suspension days. Eleven bills were called up under this procedure and passed by a two-thirds vote. These, however, do not include bills which might have been passed under suspension of the rules on days other than suspension days.

The discharge rule was rather popular. Seventeen motions to discharge committees from further consideration of certain bills, including bills on old age pensions, pernicious political activities, amendments to the N.L.R.B., coal mine inspection, and poll tax, were filed, but only two received the necessary 218 signatures, both of which were recalled from their respective committees and passed by the House.<sup>14</sup> On the other hand, a few committees administered death blows as far as they were concerned to certain bills by refusing to report the measures out, and the discharge rule was not applied. Five rather significant bills, after public hearings, were tabled by their respective committees. But two of them were finally enacted. One, the T.V.A. Tax Refund Bill, was placed as a "rider" on the Work Relief Appropriation Bill (H. J. Res. 544). The other, the Anti-Pernicious Political Activities Bill, was reconsidered by the Judiciary Committee, voted reported, and later passed.

The House broke all precedents in its use of special rules providing for the immediate consideration of particular bills. It called up and voted on 48 of them as compared with 37 in the second session of the 74th Congress, the next highest number for any one session.<sup>15</sup> In all, 65 resolutions (special rules) providing a particular procedure for the same number of legislative proposals were acted upon. Of the 48 voted on, one was rejected,<sup>15</sup> 15 were laid on the table because the bills for whose consideration they provided were disposed of under some other procedure; and two were left pending on the Calendar at the end of the session.

An analysis of the special rules shows that of the 48 all but three provided for the immediate consideration of certain bills, of which 35 were merely open rules giving otherwise unprivileged bills the right of way for a hearing in the House. Thirteen of them were closed rules. All but three specified a maximum time for general debate of the particular bill (varying from one hour to two days), which was to be equally divided and controlled by those favoring the bill and those opposing it. In all but five instances, the rules provided that the respective bills be read under the five-minute rule for amendments, immediately following the general debate, and that thereupon the committee rise and report the bill to the House, with "such amendments as may have been adopted." At that point the previous question was to be considered "as having been ordered" on the bill.

<sup>14</sup> See H.R. 801, Anti-Lynching Bill, and H.R. 9000, Veterans' Pension Bill. Neither became law.

<sup>15</sup> For further details, see this REVIEW, Vol. 33, p. 1038.

An investigation of the outcome of the various bills considered under special rules shows that only 29 of the 48 were enacted into law, four being defeated in the House, three being vetoed, three being left in conference committees, eight having passed the House only; and one resolution was voted down without even giving the bill for which the rule provided consideration a hearing.

These findings are conclusive that the Rules Committee is not used solely as an agent of the party to grant prior consideration to legislation of the Administration and of the party. A study of the closed rules, however, will disclose that they are granted only to protect majority party and Administration measures.

Significant also is the fact that whether or not a measure is highly privileged for immediate consideration or called up under a special rule, the time when the bill will be considered is determined by the House leadership. What the program on any day shall include depends on what the leadership decides. To illustrate: House Resolution 443, a special rule providing for the immediate consideration of S.326 (the Mexican Claims Bill) was adopted by the House on May 15 by a vote of 210 ayes to 96 noes. But the bill, which was a privileged question ready for consideration immediately after agreement to the resolution, was not given any further consideration until July 8, almost two months later.

*Legislative Activity.* Of the grand total of 941 private and public laws and resolutions enacted, 494 were public acts, 387 private acts, 57 public resolutions, and 3 private resolutions.<sup>16</sup> The President vetoed 107 bills and six died in conference. Significant is the fact that a great amount of the time of both houses was devoted to the consideration of bills which were never enacted.

Most of the bills to become law went through both houses predominantly as reported by the respective committees. Nearly all major bills, however, were amended in some way in one of the two houses. And it must be emphasized that some rather fundamental amendments were made in certain bills in opposition to the recommendations of the particular committees concerned. Usually more major amendments were offered to the important bills by the Senate than by the House.

<sup>16</sup> Each house played a more important rôle in legislative activity than the above figures show. The House actually passed 1,127 measures, as follows: 714 House bills, 356 Senate bills, 33 House joint resolutions, and 24 Senate joint resolutions. During the session, 3,713 bills and resolutions were introduced in the House. Of that number, 3,107 were House bills, 227 House joint resolutions, 58 House concurrent resolutions, and 321 House resolutions. House committees made 1,471 reports. The Senate actually passed 1,100 measures, as follows: 405 Senate bills, 619 House bills, 38 Senate joint resolutions, and 38 House joint resolutions. During the session, 1,709 bills and resolutions were introduced in the Senate. Of that number, 1,420 were Senate bills, 118 Senate joint resolutions, 25 Senate concurrent resolutions, and 146 Senate resolutions. Senate committees made 1,154 reports.

A considerable number of amendments offered by members on their individual responsibility were retained in the bills straight through to enactment; many others were lost along the way. Thus on the House side, the so-called Fish Amendment (providing for voluntary enlistment) to the Compulsory Military Training Bill (S.4164), adopted in the House by a fairly close vote, was lost in conference. On the Senate side, the so-called LaFollette amendment (on excess profits) to the Bill Providing Revenue for National Defense (H.R. 10039) was adopted by the Senate against the wishes of the Senate Finance Committee, but was later stricken out by the conference committee. The most controversial piece of legislation—to which a great number of amendments were offered and not one adopted—was the joint resolution (H.J.Res. 407) extending the trade treaties program for another three years. In the House alone, 22 amendments were offered and rejected.

(1) *Appropriations*. In spite of the fight at the outset to keep expenditures down, the appropriations for the third session, according to Representative Taylor, chairman of the House Appropriations Committee, totaled \$19,069,548,775 of direct appropriations and \$4,066,191,860 of contract authorizations, making a grand total of \$23,135,740,635, which was \$641,519,461 in excess of the formally presented budget estimates.<sup>17</sup> The only earlier session in which appropriations were made in excess of those of this last year was the second session of the 65th Congress (war-time Congress, November, 1917-December, 1918). In that year, appropriations totaled \$36,119,536,082.

According to a report issued by Mr. Taylor, \$13,106,227,930, or 56.6 per cent of the total amount chargeable to general revenues, was allocated for national defense and enforcement of neutrality, and \$10,029,512,705, or 43.3 per cent to all other functions of the government. Of the total amount for national defense purposes, the Army and Navy were allotted \$8,782,145,145 and \$3,537,138,137, respectively, and \$776,944,468 was assigned for civil activities contributing to national defense and enforcement of neutrality.

Most of the 24 appropriation bills enacted were passed by each of the chambers at figures much the same as reported by the respective appropriation committees. The bills passed the House at a grand total of \$13,316,361,946, which is only \$149,858,852 above the sum total of the

<sup>17</sup> After the annual budget message was submitted in January, the President sent to the House and Senate 175 and 74 communications, respectively, submitting additional supplementary estimates. These estimates totaled approximately as much as the amount of the original budget estimates (pp. 20719-20724). For a complete breakdown of the appropriations, see *Appropriations Budget Estimates, etc.*, 76th Congress, Second and Third Sessions, by Marcellus C. Sheild, clerk of House Committee on Appropriations, and Everard H. Smith, clerk of Senate Committee on Appropriations, pp. 1-1212.

bills as reported to the House. The bills passed the Senate at a grand total of \$15,040,546,542, which is \$291,026,615 above the sum total of the bills as reported to the Senate. Of the 24 bills, 15 in the House and 10 in the Senate were passed at the identical figures reported. Of particular importance is the fact that the Senate committee was much more liberal than the House committee. The House committee reported the bills at a total of \$13,166,503,094, while the Senate committee reported the same bills at \$14,749,519,927, or at an increase of \$1,583,016,833. The decisions of the conference committees on the various bills were such that the total amounts finally enacted were larger than the total sums passed in either of the two chambers.

Some significant actions on the appropriation bills merit mention here. The Relief Appropriation Bill, which has been giving Congress plenty of trouble each of the last few years, this time stirred little opposition, notwithstanding the huge outlays contemplated therein. The bill was passed at a figure above the budget estimate, namely, at \$1,157,000,000, while the estimates totaled only \$1,112,000,000. Perhaps the main reason why these huge expenditures went almost unchallenged was that a large share of the funds was allocated to defense projects.

Many provisions of the Agricultural Appropriation Bill (H.R. 8202) were unusually controversial, including the \$212,000,000 stipulation for parity payments, the Jones amendment providing \$25,000,000 for Farm Tenancy, and the \$85,000,000 provision for the food stamp program. The votes on the various agricultural appropriations disclosed divisions with little regard for party lines but based on urban interests against rural interests. Even the rural groups, representing the various parts of the country, sometimes could not see eye to eye as to what the provisions should contain.

The Labor-Social Security Bill (H.R. 9007) was the source of much trouble. The appropriation for the Wage and Hours Division was cut considerably by the House, but the Senate committee restored the decrease. The Research Division of the N.L.R.B., headed by David Saposs, was deprived of any funds for the fiscal year 1941, but the Board ignored the recommendations of Congress by transferring the work of that division to a Technical Division and assigning Mr. Saposs along with it. This was too much for the House, which at a later date inserted in the Civil Functions Appropriation Bill a proviso that "none of the appropriation 'Salaries, National Labor Relations Board, 1941' shall be obligated for the Division of Economic Research or for the Division of Technical Service." Other amendments to this bill over which there was considerable discussion were the Scrugham-Leavy Amendment, increasing C.C.C. funds by \$50,000,000, and the Collins-Johnson amendment, increasing

N.Y.A. funds to \$97,085,000. Both of these amendments were approved by large majorities.

(2) *General Legislation*: (1) *Export-Import Bank*: Two bills were enacted increasing the lending authority of the Export-Import Bank.<sup>18</sup> The first one authorized an increase in the lending authority of the bank from \$100,000,000 to \$200,000,000, purposely to make loans to Finland available during the time of her struggle with Russia. The measure passed in the Senate by 49 yeas (Dem. 38, Rep. 9, Others 2), 27 nays (Dem. 16, Rep. 9, Others 2);<sup>19</sup> no roll call vote was taken in the House. The second act increased the lending authority of the bank from \$200,000,000 to \$500,000,000 for assisting in the development "of the resources, the stabilization of the economies, and the orderly marketing of the products of the countries of the Western Hemisphere."<sup>20</sup>

(2) *National Defense Legislation*. This legislation, comprising a major portion of the legislative program of the session, was disposed of at record-breaking speed, in the absence of clearly drawn party lines. All of the bills originated with the Administration or were closely supervised by Army and Navy officials at each step through Congress. This, however, does not mean that Congress passed every bill sent to it; nor does it mean that Congress made no changes in such of the bills as it enacted.

The political line-ups to act on the various legislative and appropriation defense measures were streamlined and unified as opposed to the traditional two-party system of legislating. The Senate passed several of the major measures without a dissenting vote, and most of them passed with little opposition. In the House, roll-call votes on two of the important defense issues showed only Representative Marcantonio, a member of the American Labor party, voicing a protest, and most of the bills were passed "without objections." In fact, most of the defense issues were disposed of by both houses so rapidly and with so little opposition that the procedure on them became monotonously dull. Occasional protests were heard accusing the leadership of trying to pass legislation which was not strictly defense by labeling it "National Defense Legislation."

The major defense bills, enacted after a minimum of consideration (with the exception of the Compulsory Military Training Bill, which holds the distinction of being the most debated bill for many a session) include: the Naval Expansion Bill, authorizing an increase in the under-age naval vessels by 167,000 tons; the Naval Air-fleet Measure, increasing the air-fleet not to exceed 10,000 planes, together with training for 16,000 naval aviators, and for acquiring aviation facilities; the Naval Reorganization Bill, abolishing the Bureaus of Construction and Repair and Engineering

<sup>18</sup> See S.3069 (P.L. 420) and H.R. 10361 (P.L. 792).

<sup>19</sup> P. 2171.

<sup>20</sup> H.R. 10361 (P.L. 792).



and consolidating them under a Bureau of Ships; the bill to Expedite Naval Shipbuilding, a comprehensive measure relaxing limitations on ship construction and initiating speedier action; the bill Expediting National Defense, giving the "go ahead sign" to the Secretary of War to build up the military forces; the Aircraft Procurement Law; the bill expanding R.F.C. loan authority to finance businesses participating in the production of national defense items; the bill authorizing the President to requisition export articles or materials forbidden by the Export Control Administration; and the Soldiers and Sailors Relief Act, preventing insurance policies of service men from lapsing and to stay other payments during compulsory training periods.<sup>21</sup> The Compulsory Military Training Bill<sup>22</sup> and the resolution authorizing the President to call out the National Guard will be mentioned here separately. The debate on the Compulsory Military Training Bill consumed 302 pages of the *Congressional Record* in the House and 665 in the Senate. There was quite a fight over the Fish amendment providing trial of voluntary enlistment on a sixty-day basis. It was adopted in the House by 207 yeas (Dem. 63, Rep. 140, Others 4), 200 nays (Dem. 178, Rep. 22, Others 0), but it was stricken out in conference.<sup>23</sup> The age limits for induction presented an issue for much conflict. A number of amendments on various ranges of ages were voted on. The Senate finally agreed on setting the age limits at twenty-one to thirty-one. The House set its age limits at twenty-one to forty-five. In conference, the ages of twenty-one to thirty-five were agreed upon; and these were finally enacted into law. The conscription of wealth amendments were highly controversial. The bill passed in the House by 263 yeas (Dem. 212, Rep. 51), 149 nays (Dem. 33, Rep. 112, Others 4), and the Senate by 58 yeas (Dem. 50, Rep. 8), 31 nays (Dem. 16, Rep. 11, Others 4). The conference report was adopted in each chamber by almost identical party divisions.

The bill authorizing the President to call into active service members and units of the Reserve Components and Retired Personnel of the Regular Army was also given considerable attention.<sup>24</sup> The major points at issue included the questions of giving members of the Guard a definite time in which to resign before the call into active service would apply and of confining the use of the Guard to the United States instead of the Western Hemisphere.<sup>25</sup> The bill passed the Senate by 71 yeas (Dem. 49, Rep. 20, Others 2), 7 nays (Dem. 4, Rep. 2, Others 1),<sup>26</sup> and the House by 343 yeas (Dem. 214, Rep. 126, Others 3), 33 nays (Dem. 4, Rep. 28, Others 1).<sup>27</sup>

<sup>21</sup> S. 4270 (P.L. 861).

<sup>22</sup> S. 4164 (P.L. 783).

<sup>23</sup> Pp. 17791-17792.

<sup>24</sup> S. J. Res. 286 (P. Res. 96).

<sup>25</sup> An amendment placing such a limitation was defeated in the Senate by 38 yeas (Dem. 22, Rep. 13, Others 3), 39 nays (Dem. 30, Rep. 9, Others 0). P. 15410.

<sup>26</sup> P. 15412.

<sup>27</sup> P. 15943.

(3) *Pernicious Political Activities Act* (Hatch Act). Next to the Compulsory Military Training Bill, the Hatch Bill was the most discussed measure of the session. The act provides for a general extension of the Anti-Pernicious Political Activities Law enacted in the first session of the same Congress to include all employees paid in whole or in part with federal monies, to limit campaign contributions of individuals, and to extend the application of civil service rules regulating political activities to state employees paid from federal funds.

The bill was debated in the Senate for ten days (filling some 304 pages of the *Congressional Record*), during which time 17 roll-call votes on amendments and one on the passage of the bill were taken. The Brown amendment, including within the terms of the act employees of certain corporations, was rejected by 31 yeas (Dem. 30, Others 1), 53 nays (Dem. 30, Rep. 20, Others 3); the Bankhead amendment limiting campaign contributions by any one person to \$5,000 was adopted by 40 yeas (Dem. 36, Rep. 1, Others 3), 38 nays (Dem. 19, Rep. 18, Others 1); and the Hatch amendment applying the civil service rules on political activity to state employees was agreed to by 42 yeas (Dem. 21, Rep. 20, Others 1), 34 nays (Dem. 33, Others 1). The bill passed by 58 yeas (Dem. 34, Rep. 22, Others 2), 28 nays (Dem. 27, Others 1).

The House held up the bill for almost three months. Having been referred to the Judiciary Committee on March 19, it was tabled on May 1 by a vote of 14 to 10. But the public would not let the case rest. After much agitation, the committee decided upon reconsideration, and on May 29 voted (16 to 8) to report the bill in a redrafted form. The measure was called up in the House under a special rule; and after two days' consideration, it was passed by 243 yeas (Dem. 89, Rep. 152, Others 2), 122 nays (Dem. 120, Rep. 1, Others 1). The House amendments were adopted by the Senate without sending the bill to conference.

(4) *Reorganization Plans*: Three Reorganization Plans (III, IV, V),<sup>28</sup> in pursuance of the Reorganization Act of 1939, were submitted to Congress by the President. Plan III affected the Treasury, Interior, Agriculture, and Labor Departments and the Civil Aeronautics Authority. Plan IV made changes of an interdepartmental character affecting the Departments of State, Treasury, Justice, Post Office, Agriculture, Commerce, and Interior, together with the Maritime Commission, the Civil Aeronautics Authority, and the Federal Security Agency. The C.A.A. and the Weather Bureau were transferred to the Department of Commerce. Plan V transferred the Immigration and Naturalization Service from the Department of Labor to the Department of Justice.

The House passed a resolution (H. Con. Res. 60) to kill Plan IV by 232

<sup>28</sup> Plan III was submitted on April 2, Plan IV on April 11, and Plan V on May 22.

yeas (Dem. 77, Rep. 153, Others 2), 153 nays (Dem. 151, Others 2). The Senate rejected the resolution by 34 yeas (Dem. 12, Rep. 20, Others 2), 46 nays (Dem. 44, Others 2). Thus in accordance with the provisions of the Reorganization Act of 1939 the plan was scheduled to go into effect in 60 days.<sup>29</sup> All three of the Plans, however, were put into effect ahead of schedule by Congress passing H. J. Res. 551, making Reorganization Plan V effective in ten days<sup>30</sup> and Plans III and IV on June 30.

(5) *Taxes*. In the first part of the session, it appeared that there would be no tax legislation at all; but before the end two general tax measures were enacted to aid in defraying the extraordinary costs of national defense preparedness. The first bill, National Defense Tax Bill (H.R. 10039), as introduced, provided for an increase in the debt limit and for taxes on distilled spirits, cigarettes, a general increase of 10 per cent on all levies, including excess profits, capital stock, estate, and gift taxes, together with an increase of surtax rates. The bill was enacted pretty much as introduced, several minor changes having been made. It passed under a closure rule in the House by 396 yeas (Dem. 241, Rep. 152, Others 3), 6 nays (Dem. 0, Rep. 5, Others 1).

The Senate made several changes, including addition of the LaFollette amendment levying excess profits taxes on corporations and the Connally amendment providing for a war profits tax. The bill passed by 75 yeas (Dem. 61, Rep. 11, Others 3), 5 nays (Rep. 4, Others 1). In conference, both the LaFollette amendment and the Connally amendment were stricken out in spite of the fact that they had been adopted in the Senate by 41 yeas (Dem. 29, Rep. 8, Others 4), 31 nays (Dem. 23, Rep. 8) and 51 yeas (Dem. 43, Rep. 4, Others 4), 28 nays (Dem. 17, Rep. 11), respectively.

The second bill, the Excess Profits Tax (H.R. 10413), was devised to meet a three-fold purpose: to levy on excess profits, to suspend the Vinson-Trammel Profits Limitation Act, and to provide an amortization tax exemption scheme, aimed more at relieving industry than at raising revenue. The bill was very technical, and the House passed it without offering an amendment or taking a roll-call vote. The Senate made a few changes in the bill and passed it by 46 yeas (Dem. 45, Rep. 1), 22 nays (Dem. 5, Rep. 16, Others 1). But the measure was criticized severely by some senators, particularly LaFollette and Vandenberg.

In the Senate, the Brown amendment to the bill, taxing government bonds and other securities, was rejected, after a long and heated debate, by 30 yeas (Dem. 19, Rep. 8, Others 3), 44 nays (Dem. 34, Rep. 10).<sup>31</sup> The

<sup>29</sup> The law requires a positive disapproval by both houses in order to defeat a reorganization proposal by the President.

<sup>30</sup> The resolution was approved on June 4, making Plan V effective June 14.

<sup>31</sup> P. 18621. There has been considerable agitation in Congress during the last few years for a tax on government securities. In the 75th Congress, the Senate adopted a resolution (S. Res. 303) setting up a special committee on the taxation

LaFollette amendment, offered as a substitute for the excess profits tax provision of the bill (adopted by the Senate in the first tax bill), was rejected by 20 yeas (Dem. 10, Rep. 8, Others 2), 41 nays (Dem. 34, Rep. 7, Others 0).<sup>32</sup> Senator LaFollette urged adoption of his amendment on the ground that it was "purely and simply an excess-profits tax" and involved only 20 printed pages as opposed to the 60 pages of the committee's provision. The conference report was adopted in both houses without roll-call votes.

(6) *T.V.A. Legislation.* The bill providing for the payment of certain sums by the Tennessee Valley Authority to state and local governments in the T.V.A. area to replace taxes lost to the communities in which properties were taken over by the federal government had a stormy legislative voyage. The Senate finally had to resort to tacking the bill on a House bill as a "rider" in order to get it enacted—the same procedure that it had used in the first session of the 76th Congress to procure enactment of the T.V.A. Bond Issuance Act of 1939. The House Military Affairs Committee, however, had tabled the bill before the Senate took that action, a last resort to get the issue before the House for a vote. Consequently, the Senate added the bill as an amendment to H.J.Res. 544 (Work Relief Appropriation Bill) on June 12, without a roll-call vote, and it then went before the House as a part of that conference report. The House thereupon adopted the amendment by 205 yeas (Dem. 193, Rep. 8, Others 4), 178 nays (Dem. 141, Rep. 37).<sup>33</sup>

(7) *Trade Treaties.* The bill continuing the trade treaties program for an additional three years was fought in both houses on partisan and sectional bases, and enacted after four months of continuous consideration without an amendment.<sup>34</sup> The Senate rejected several amendments by close margins and with little regard for party lines as far as the Democrats were concerned. In fact, several amendments to prevent presidential encroachment on the Senate's treaty-making power were offered, debated, and defeated by very small margins. For example, the Pittman amendment for Senate ratification of all trade agreements, debated for four days, was re-

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of government securities and salaries (see Senate Report 2140 of 76th Congress). The report of that committee recommended the taxation of government securities, being signed by Senators Brown, Byrd, Miller, Burke, and Townsend.

<sup>32</sup> P. 18445. The Finance Committee rejected the amendment by 17 to 3.

<sup>33</sup> Pp. 13271-13272. When the amendment was pending before the House, Representative May, chairman of the House Military Affairs Committee, stated: "I am here today defending the jurisdiction and rights of a major committee of this House against the overriding and roundabout way of telling the House of Representatives that its committee cannot write legislation after six or eight weeks of hearings, and then after many hours and weeks of consideration in executive session."

<sup>34</sup> See H.J.Res. 407 (P.Res. 61).

jected by 41 yeas (Dem. 18, Rep. 21, Others 2), 44 nays (Dem. 43, Others 1). The O'Mahoney amendment for congressional approval of trade treaties was defeated by 38 yeas (Dem. 15, Rep. 20, Others 3), 44 nays (Dem. 43, Others 1).

Public hearings on the bill by the standing committees of both bodies were extensive and involved many pages of testimony. The Ways and Means Committee held public hearings for 20 days, yielding 2893 pages of testimony, and the Finance Committee held hearings for nine days, yielding 867 pages. The bill was debated and passed in the House in one day. Twenty-two amendments were offered, but every one was voted down, some on the basis of sectionalism as much as on party lines. The measure passed the House by 216 yeas (Dem. 210, Rep. 5, Others 1), 168 nays (Dem. 20, Rep. 146, Others 2). The Senate passed the bill by 42 yeas (Dem. 41, Rep. 1), 37 nays (Dem. 15, Rep. 20, Others 2).

(8) *Transportation*. The Transportation Act of 1940 was passed by both houses during the first session of the 76th Congress and sent to conference, where it was lodged when the session adjourned *sine die*. On April 26, 1940, the conferees made a report on the bill; but it was recommitted by the House, on May 9, by 209 yeas (Dem. 161, Rep. 44, Others 4), 182 nays (Dem. 71, Rep. 111), with recommendation that the conferees insist on (1) the Jones amendment for reduced freight rates on farm products, (2) the Wadsworth amendment permitting all kinds of carriers to cut rates so long as they should get a compensatory return "after taking into consideration overhead and all other elements entering into the cost . . . for the service rendered," and (3) the original House provisions relating to combinations known as the Harrington amendment, with one modification to protect "railroad employees affected."

After much alteration of the measure, the conferees agreed to make a second report on August 7. The Wadsworth amendment prohibiting rates below the cost of production was eliminated. The Harrington amendment relating to employees affected by rail consolidations was revised. Under the revision, railroads would be required to pay a dismissal wage or maintain employees affected by a consolidation for a period of four years. The Jones amendment was revised in such a manner as to give the same preference to farm products as was given to manufactured goods.

Points of order were raised against the report in both houses on the ground that the conferees had gone beyond their jurisdiction in including material not in either bill and striking out provisions included in both bills. The points of order were overruled, and the House agreed to the report on August 12 by 246 yeas (Dem. 122, Rep. 123, Others 1), 74 nays (Dem. 55, Rep. 17, Others 2). The Senate adopted the report by 59 yeas (Dem. 43, Rep. 15, Others 1), 15 nays (Dem. 11, Rep. 3, Others 1). These divisions show signs of coastal representatives and senators voting against, and inland members voting for, the report.

(9) *Miscellaneous*. In addition to the above mentioned bills, a great number of other important measures were enacted which of necessity will be discussed here very briefly. Some 20 minor laws on various phases of agriculture and forestry were passed. Agricultural measures which were given the most consideration, however, failed of enactment. Perhaps the most important ones passed are the bill to extend the sugar quota system and taxes on sugar for another year (H.R. 9654) and the bill increasing the credit resources of the Commodity Credit Corporation (S. 3998). The vote on passage of the latter in the House showed definite signs of an agricultural *bloc*, together with solid Democratic support—247 yeas (Dem. 209, Rep. 34, Others 4), 106 nays (Rep.). The Boulder Dam Rates Bill passed each house without much opposition and rather quickly, once it had been reported out of the House Committee on Irrigation and Reclamation. The Census and Reapportionment Bill, continuing the existing law on the reapportionment of representatives, was passed in both houses without a roll-call vote. The Federal Highway Bill was given rather exhaustive consideration in the House Committee on Roads, and both bodies passed the measure after hardly any discussion. The legislation on control of foreign exchange was enacted very hurriedly and without much discussion. The act provides control over foreign-exchange operations, transfers of credit, and the like during the time of the war in order that the financial structure of the country may be properly safeguarded and assistance prevented from being given an enemy country.

Worthy of mention is the passage of the act to prohibit subversive activities, to amend certain provisions of the law with respect to the admission and deportation of aliens, and to require finger-printing and registration of aliens. This measure passed the House in the first session, but the Senate did not give it serious consideration until after the defense program was well under way. The most discussed private bill of the session was the one to deport Harry Bridges (H.R. 9766). It was passed in the House by 330 yeas (Dem. 180, Rep. 147, Others 3), 42 nays (Dem. 37, Rep. 4, Others 1). The Senate Committee reported the bill, but it died on the Senate Calendar. The major select committees of the House and Senate created or continued during the session for the purpose of making certain investigations include: the T.N.E.C., the Dies committee on un-American activities, the Smith committee on the N.L.R.B., the Wheeler committee on control exercised by foreign organizations over certain aspects of the defense program, and the committee to study small business needs. One rivers and harbors bill was vetoed, but another was drafted and enacted, involving twenty-three projects and appropriating up to \$35,622,000. The Wool Labeling Bill (S.162), better known as the "Truth in Fabric Bill," was enacted to "protect producers, manufacturers, distributors, and consumers from the unrevealed presence of substitutes and mixtures in spun, woven, knitted, felted, or otherwise manufactured wool products." Finally,

a bill to regulate investment companies, a long and technical bill, was passed by both houses in less than half an hour.

(10) *Bills Failing of Enactment.* Much of the time of the session was devoted to the consideration of bills which were not finally enacted. The Administrative Court Procedure Bill (H.R. 6324), designed to curb certain administrative powers until sanctioned by the courts,<sup>35</sup> after much delay and manipulation, was passed by both houses, but vetoed by the President. It passed the House by 282 yeas (Dem. 130, Rep. 150, Others 2), 97 nays (Dem. 93, Rep. 2, Others 2), and the Senate by 27 yeas (Dem. 10, Rep. 16, Others 1), 25 nays (Dem.). The House refused to override the President's veto by 153 yeas (Dem. 39, Rep. 114), 127 nays (Dem. 123, Rep. 2, Others 2). The Anti-Lynching Bill (H.R. 801) was discharged from the Rules Committee in the House and passed by 252 yeas (Dem. 110, Rep. 139, Others 3), 131 nays (Dem. 122, Rep. 9). The Senate Judiciary Committee reported the bill, but it died on the Senate Calendar without further consideration. The bill to extend the Federal Insurance Act to include cotton was passed by both houses, but vetoed. The Foreign Silver Purchase Act (S. 785) was debated in the Senate for five days and finally passed by a vote of 45 yeas (Dem. 23, Rep. 19, Others 3), 36 nays (Dem. 34, Rep. 1, Others 1). The bill was messaged to the House, where it remained on the Speaker's table from May 10 until June 17, at which time it was referred to the Ways and Means Committee. It is interesting to note, however, that the House referred the bill the day before the measure was offered as an amendment in the Senate to the National Defense Tax Bill (H.R. 10039). In an attempt to get the House to act on the bill, the Senate Finance Committee reported the measure, which the Senate had already passed, as an amendment to the tax bill by a vote of 14 to 6; but the Senate, after the House referred the bill to the Ways and Means Committee, voted down the amendment by 46 nays (Dem. 45, Others 1), 35 yeas (Dem. 14, Rep. 18, Others 3). The measure then died in the House committee without further consideration.

Several pieces of labor legislation were acted on but lost along the way. The Senate passed the Oppressive Labor Practices Bill by 47 yeas (Dem. 37, Rep. 7, Others 3), 20 nays (Dem. 14, Rep. 6). It was immediately messaged to the House and referred to the Committee on Labor, where it was permitted to die without public hearings. A much-amended Wages and Hours Bill was defeated in the House when the bill was recommitted to the Labor Committee by 205 yeas (Dem. 122, Rep. 79, Others 4), 175 nays (Dem. 104, Rep. 71). This vote discloses a division based on industry against agriculture, with some signs of sectionalism. A bill to amend the

<sup>35</sup> The bill provided a uniform procedure for all federal administrative agencies, not otherwise exempt, and for a standard review of the orders and decisions of such agencies. A number of agencies were exempted.

N.L.R.B. Act by changing the board and placing certain restrictions on it, together with redefining policy, passed the House by 258 yeas (Dem. 117, Rep. 141), 129 nays (Dem. 112, Rep. 14, Others 3). The bill was messaged to the Senate and referred to the Committee on Education and Labor, where it remained. A Federal Mine Inspection Bill passed the Senate on January 18, after a very brief debate, but died in the House Mines and Mining Committee.

*The Senate as a Council.* The Senate as a council had a busy routine program. Little opposition was voiced against any of the nominations, and the treaties acted on were not controversial. The Senate ratified thirteen treaties without amendments or reservations, returned two to the President, and left three pending on the Executive Calendar. No one of the thirteen treaties was controversial enough to necessitate a roll-call vote. The Senate received 17,732 nominations for confirmation, as compared with 13,340 in 1939 and 14,998 in 1935. Of the number, 17,680 were confirmed, 11 rejected, eight withdrawn, and the others were not acted on. Some of the more notable nominations of the session (all approved) included Frank Murphy to the Supreme Court, Frank Knox as Secretary of Navy, Henry L. Stimson as Secretary of War, Lindsay Warren as Comptroller-General, Robert Jackson as Attorney-General, Albert G. Black as Governor of the Farm Credit Administration, Harry A. Millis to the National Labor Relations Board, John J. Dempsey to the Maritime Commission, and Clarence A. Dykstra as Director of Selective Service.<sup>36</sup> The most discussed appointments were those of Stimson and Knox, both Republicans, to membership in the President's cabinet. The nomination of Stimson was agreed to by 56 yeas (Dem. 45, Rep. 10, Others 1), 28 nays (Dem. 14, Rep. 12, Others 2). The nomination of Knox was confirmed by 66 yeas, 16 nays. Hearings on the nomination of Thad Brown to the Federal Communications Commission were held by the Senate Committee on Interstate Com-

<sup>36</sup> See *Civilian Nominations*, Printed for the use of the Secretary of the Senate (Government Printing Office, 1941). The following table of nominations, prepared by Lewis W. Bailey, Executive Clerk, is of interest:

Session and Congress	Post-masters	Army	Navy	Marine Corps	Other civilians	Totals by sessions
Extra session 73d, Mar. 4 to 6, 1933.....	None	None	None	None	16	16
1st sess. 73d, Mar. 9 to June 16, 1933.....	None	519	431	34	272	1,256
2d sess. 73d, Jan. 3 to June 18, 1934.....	4,753	1,310	1,139	126	494	7,822
1st sess. 74th, Jan. 3 to Aug. 26, 1935.....	5,115	6,714	1,958	564	647	14,998
2d sess. 74th, Jan. 3 to June 20, 1936.....	3,975	1,744	849	148	773	7,489
1st sess. 75th, Jan. 5 to Aug. 21, 1937.....	1,297	2,287	2,929	419	769	7,701
2d sess. 75th, Nov. 15 to Dec. 21, 1937.....	351	516	325	32	161	1,385
3d sess. 75th, Jan. 3 to June 16, 1938.....	3,439	1,249	856	70	630	6,244
1st sess. 76th, Jan. 3 to Aug. 5, 1939.....	3,916	2,910	3,025	652	838	11,341
2d sess. 76th, Sept. 21 to Nov. 3, 1939.....	None	None	None	None	None	None
3d sess. 76th, Jan. 3, 1940, to Jan. 3, 1941....	6,222	7,350	2,680	435	1,045	17,732
Totals of each classification Mar. 4, 1933, to Jan. 2, 1941.....	29,068	24,599	14,192	2,480	5,645	
Grand total of all nominations received—Mar. 4, 1933 to Jan. 3, 1941.....						75,084



merce for 13 days, furnishing over 686 printed pages of testimony. In the end, the nomination was withdrawn.

*The President and Congress.* The relationships between the Administration and Congress were much like those in the last few sessions. Under the well-known leadership of the Roosevelt Administration, almost all of the major legislation was drafted in or recommended by the Administration itself. With occasional exceptions, Congress did little more than look into, slightly amend, or block the bills upon which it was called to act. The third Supplemental National Defense Appropriation Bill, appropriating nearly one and one-half billion dollars in accordance with requests of the President and War Department, was passed in the Senate after less than ten minutes of debate, with two senators participating. Not one question was raised as to the total amount for which the bill provided, and, judging by the remarks made, it is doubtful whether ten senators actually knew the amount of money involved; certainly they did not know for what purposes the money was going to be spent. The House debated the measure for only 32 pages of the *Record*, and not one amendment of any significance was offered.

With respect to appropriations, the budget estimates, plus 250 supplemental estimates forwarded from time to time to Congress by the President, determined government expenditures for the fiscal year 1941. Congress did curtail certain estimates and increase others; but, all told, the appropriations, totaling over \$19,000,000,000, differed from the budget estimates by only \$650,000,000.

The two general tax bills were drafted under the supervision of the Ways and Means Committee and altered by the Senate Finance Committee. But Treasury officials worked closely with both committees and followed the bills all the way through Congress. Compromises were made, but the shadows of the Administration were frequently visible in the determination of what principles and policies should be included in the two measures.

Sentiment in Congress in favor of altering the New Deal trade agreements program was squelched by Administration pressure. When the resolution extending the program for three years<sup>37</sup> was up for consideration, numerous amendments were offered in both chambers aimed at curbing executive powers. But the resolution was finally enacted in the form desired by the Administration. Some of the amendments were rejected by margins of only one or two votes.

The House made unsuccessful attempts to override four different vetoes of the President. On each occasion, a large majority went on record against the President's action, but the necessary two-thirds majority was not forthcoming.

<sup>37</sup> See H.J.Res. 407.

The vote to override the veto of the Pocket Veto Bill<sup>38</sup> showed 184 yeas (Dem. 65, Rep. 117, Others 2), 106 nays (Dem. 103, Rep. 2, Others 1). The veto of the bill directing payment to the state of Ohio for old-age assistance for October, 1938,<sup>39</sup> was sustained by 171 yeas (Dem. 38, Rep. 133), 152 nays (Dem. 150, Others 2). The attempt to override the veto of the bill relating to bandmasters in the regular army, failed by 197 yeas (Dem. 75, Rep. 80, Others 2), 114 nays (Dem. 113, Rep. 1). The veto of the bill granting increases in invalid pensions to widows was sustained by 217 yeas (Dem. 74, Rep. 139, Others 4), 142 nays (Dem. 132, Rep. 10).

The President vetoed 107 bills, but the Administration did not have its way on every count, and much opposition was expressed against it. Definite action was taken several times by either the House or the Senate to show disapproval of the Administrative leadership. The President's veto was overridden twice, once on a general bridge bill and again on a veterans pension bill. The House rejected one of the President's Reorganization Plans (No. IV), although it was not defeated, since under the Reorganization Act of 1939 both houses are required to take affirmative action against a plan in order to prevent it from going into effect. A second Rivers and Harbors Bill, to replace the one vetoed by the President, was drafted and enacted.

The General Bridge Bill was passed over the President's veto in the House by 324 yeas (Dem. 181, Rep. 140, Others 3), 68 nays (Dem. 67, Others 1), and in the Senate by 65 yeas (Dem. 46, Rep. 17, Others 2), 17 nays (Dem. 15, Others 2). The veto of the Relief of Officers and Soldiers of Volunteer Service in Spanish American War and Philippine Island Service was overridden in the House by 274 yeas (Dem. 148, Rep. 122, Others 4), 82 nays (Dem. 61, Rep. 21), and in the Senate by 76 yeas (Dem. 53, Rep. 20, Others 3), 3 nays (Dem.). The House passed the bill on Intervention of States in Certain Law Suits over the President's veto by 253 yeas (Dem. 127, Rep. 124, Others 2), 46 nays (Dem.). In the Senate, the bill was referred to the Judiciary Committee on August 6, where it remained during the rest of the session without consideration.

FLOYD M. RIDDICK.

*Washington, D. C.*

<sup>38</sup> H.R. 3233.

<sup>39</sup> See H.R. 5118.

## PUBLIC ADMINISTRATION

**Political Science and Federal Employment.\*** Only since 1939 have political scientists, as such, had much chance to gain entrance into the permanent federal civil service. This opportunity came as the result of two well-timed phenomena: (1) the demand of a number of federal agencies for young men and women educated in certain branches of political science, and (2) the United States Civil Service Commission's announcement of the Junior Professional Assistant examination, which included an optional called "Junior Administrative Technician." This combination of happy circumstances, however, did not solve all the problems of the young political scientist or clarify all the requirements for federal employment; so, at the 1939 meeting of the American Political Science Association a committee was appointed to study the question.

*Reasons for Appointing a Committee.* Specifically, the Committee on the Civil Service was charged with inquiring into the alleged omission of political science from the professions listed in the Civil Service Commission's 1940 announcement of the Junior Professional Assistant examination. The committee was charged also with investigating general employment opportunities for political scientists in the federal civil service, with special reference to recent graduates.

*Factual History.* Before going further, a setting is perhaps necessary. There have been two types of examinations that admitted political scientists—those on the clerical level, beginning ordinarily at \$1,620 a year, and those on the professional level, beginning at \$2,000 a year; if promoted to a higher type of work, the salaries, of course, go higher. In the first category are the examinations for Junior Civil Service Examiner, held in 1934 and 1936.<sup>1</sup> In the second category are the Social Science Analyst examinations, held in 1937,<sup>2</sup> and the two examinations for Junior Professional Assistant, one held in 1939 and one in 1940. The political science (and other) appointees from the 1934 and 1936 lists were often given purely clerical and usually routine jobs, and those from the political science group of subjects of the 1937 list were so few in number as to be almost negligible. The committee will confine its attention, therefore, to the 1939 and 1940 lists, or "registers," as they are called. These tests look toward creating, in good

\* A report of the Committee on the Civil Service (Frederick M. Davenport, chairman, Leonard D. White, G. Lyle Belsley, Lewis B. Sims, and Frances R. Fussell), submitted to the American Political Science Association at its Chicago meeting, December 29, 1940.

<sup>1</sup> See Leonard D. White, *Government Careers for College Graduates; An Experiment in the Selection of Federal Employees from Liberal Arts Colleges* (Chicago: The Civil Service Assembly [Pamphlet No. 8, 21 pp.], June, 1937).

<sup>2</sup> See Lewis B. Sims, "The Social Science Analyst Examinations," in this REVIEW, Vol. 33 (June, 1939), pp. 441-450.

time, a body of junior executives for whom there is a real need in the federal government. The top students in the colleges are among those who are particularly fitted for these positions.

Like their predecessors, the Junior Professional Assistant examinations included political science as merely one of many disciplines, and the only optional of these latest examinations in which we have a direct interest is Optional 1, "Junior Administrative Technician." In 1939, there were 5,900 who filed for the examination in this optional; 5,700 were admitted to the competition; and 1,300 passed. In 1940, there were 4,600 applicants; 2,900 were admitted; and 540 passed. These figures are not exactly comparable, for reasons soon to be stated.

What of the use made of these registers? The answer is, emphatically, that both the 1939 and the 1940 registers for Junior Administrative Technicians were in great demand as soon as they were established, and they continued to be used, because the people selected therefrom proved to be, on the whole, uncommonly satisfactory for the work assigned them. From the 1939 register, somewhat more than 300 appointments were made, of which about half were of the public administration type, compared with about 250 that have already been made from the 1940 register (about six months' use). It appears from these figures that there is a good chance in the public service, in appropriate positions, for young men from the colleges.

The level and type of work assigned is an important factor, and a discussion of that point is presented later in this report.

*Education to Meet the 1940 Requirements.* The educational requirements for Junior Administrative Technicians were broader and looser in 1939 than in 1940. In 1939, they consisted of a bachelor's degree with 20 semester hours in "political science, public administration, business administration, or any combination of these subjects." In 1940, a bachelor's degree was required and, in addition, the following: "24 semester hours in public administration, political science, or economics, or a combination of these subjects, provided that at least 12 hours must have been in any one or a combination of the following: principles of public administration; public personnel administration; organization, management, and supervision; public budgetary or fiscal administration; administrative or constitutional law; and courses in the application of public administration principles to functional activities such as public welfare administration, public health administration, and public utilities regulation."

Political science, it will be seen, was still included, with increasing emphasis upon public administration—general, personnel, and fiscal—and upon organization and management. Indeed, so great was this emphasis that many applicants found themselves eligible only by virtue of a semester or more of graduate work.

Another interesting factor is the following. Because of the different educational requirements, the statistics quoted above, comparing the 1939 and the 1940 Junior Administrative Technician registers, require explanation. The 1,300 placed on the earlier register consisted of about 250 eligibles in public administration, about 600 in business administration, only six in personnel administration, and about 450 in political science *per se*. Thus, only 250 passed an examination comparable with the one passed by 540 in the succeeding year, and it was almost exclusively from among these 250 that there was demand from federal officials for filling staff-aide positions. Through these examinations several hundred good men entered the federal service.

*Possible Objections to the 1940 Requirements.* Three objections to the strict requirements set down in 1940 have been voiced by a number of professors and students. These objections are: (1) By inserting the provision that a core of 12 semester hours had to be shown in public administration, organization and management, or public law,<sup>3</sup> the Civil Service Commission was aiding in the "vocationizing" of political science at the undergraduate level.<sup>4</sup> (2) Small colleges offering only one or two courses in these fields were discriminated against.<sup>5</sup> (3) By the admission of an unlimited amount of constitutional and administrative law, a disproportionate number of outright attorneys were eligible, whereas applicants trained in other branches of political science—some of them more pertinent—were disqualified. A fourth objection has been expressed by officials of the federal departments, namely, that no credit whatever was given an applicant for his training in the quantitative method, especially statistics but possibly also accounting.

*Net Appraisal of the 1940 Requirements.* The committee concludes that political science was *not* omitted from the 1940 Junior Professional Assistant examination, because many political sciences subjects were listed as suitable for qualifying for the Junior Administrative Technician optional.<sup>6</sup> The committee also concludes that, despite the striking improvement in the 1940 announcement over the one in 1939, still further improvement

<sup>3</sup> Much depends on how the Civil Service Commission appraises the content of any college course, for the title alone is not relied upon for classification.

<sup>4</sup> Whether this objection seems valid is answered at page 307, *infra*.

<sup>5</sup> A partial answer to this objection is that it may not be desirable to try to recruit administrative analysts or technicians from *all* the colleges and universities. Some institutions may wish to specialize in public administration, and others may not. This is already true of forestry, architecture, journalism, dentistry, social-service work, and many other subjects. Furthermore, the Civil Service Commission insists that when it certifies a man as an administrative technician, it must be fairly sure that the man really knows administration.

<sup>6</sup> Also, courses in political science were acceptable as partial qualification for the Junior Agricultural Economist optional.

could be effected by liberalizing certain of the requirements and tightening others.

Prompting the committee to propose a change in the requirements for 1941 are three factors: (1) the desire to allow a wider choice of subjects, having in mind the smaller colleges and their more restricted curricula; (2) the desire to recognize the value of a modicum of legal knowledge about public administrative affairs, but to bar, at the same time, the man trained as an attorney but not as administrative analyst; and (3) the desire to recognize the administrative technician's great need for an awareness in the statistical or quantitative approach to administration and administrative analysis. At least the political science curriculum for the undergraduate should include discipline enough in the subject to develop in the student headed for the public service a modicum of ability to use statistics and to understand something of the statistical method. The committee has discussed these points with the Commission, and it is understood that they will be reflected in the Junior Professional Assistant announcement for 1941.<sup>7</sup>

It will be seen that the Committee has little fear that political science will be "vocationized" at the undergraduate level. On the contrary, it believes that a study of public administration at the undergraduate level can serve as a needed synthesizer of the entire field of political science and a great stimulation to informed citizenship. When properly organized, studies in public administration reach not only across the different specialties that constitute the political science curriculum, but also into certain of the disciplines taught in other quadrangles of the campus.

*The Appointees and Their Work.* To keep our perspective and hence our thinking as clear as possible, a brief statement should be added relative to the type and level of work that the appointees from the Junior Administrative Technician optional actually do. First, it should be made clear that many appointing officers are loath to proffer a \$2,000 professional position to the liberal arts graduate with no additional education and no ex-

<sup>7</sup> On January 6, 1941—after this report was written—the 1941 announcement was made, the closing dates being January 20 and 23. For the Junior Administrative Technician optional the requirements read as follows:

"30 semester hours in public administration, political science, economics, history, or sociology, or in a combination of these subjects, provided that at least 12 hours must have been in any one or a combination of the following: principles of public administration; personnel administration (public or private); management and supervision (public or private); public finance; public budgetary administration; administrative or constitutional law; courses in the application of public administration principles to functional activities, e.g., public welfare administration, public health administration, and not to exceed 3 semester hours in statistics and/or accounting." Then there was added, significantly: "The professional questions in the examination for Junior Administrative Technician will fall in the field of public administration."

perience;<sup>8</sup> and since many applicants who file for this examination are willing to go to work at \$1,620, this is at the present time the customary starting salary for appointees from the Junior Administrative Technician register. These young men—there are few women—are given assignments ranging from pure routine to work really worth \$2,000, depending largely upon which federal agency is doing the employing.

A negligible few appointees are given supervisory assignments. Rather, they are put at plain clerking, at administrative analysis of an elementary nature, or at semi- or sub-professional work demanding a familiarity with the structure, management, and finance of government. Their duties are primarily as staff aides; they perform as personnel or budget assistants, as administrative clerks, or as junior analysts in administrative and planning studies. Among the federal agencies recently appointing such personnel are the War Department, the Social Security Board, the Department of Agriculture, and the Bureau of the Budget. A few Junior Administrative Technicians find employment in certain types of line activities, e.g., local institutional analysts in the Bureau of Agricultural Economics, field-assistant work with the Social Security Board, and state and local government finance in the Bureau of the Census.

So much for the Committee's more specific assignment. Attention is now turned to possible improvements at our universities and at the Civil Service Commission.

*Needed Changes in the Political Science Curriculum.* Judging by the opinions of federal officials and by observation at our various colleges and universities, five changes are required in connection with the political science curriculum, namely:

(1) Provision should be made whereby undergraduate students are given tools to work with. This means, primarily, that political science students should be required, or at least encouraged, to pursue a semester or year of statistical method and a semester of accounting. In academic circles, it is hardly realized how current is the use of the quantitative technique, either in administrative analysis or in social science research generally in the federal service.

(2) Further emphasis should be placed upon method—upon ways of approaching a problem, upon ways of solving or analyzing a problem, upon precision and clarity of thought, upon mind-training as well as mind-filling. Some federal officials contend that the young political scientist is less systematic and less original than his fellow-worker educated in engineering, natural science, economics, or accounting.

(3) Students of political science should be both allowed and encouraged

<sup>8</sup> This is true especially in the case of social-service work, where the Civil Service Commission stipulates "at least 1 full year of study (undergraduate or post-graduate) in social service in an accredited school of social work. . . ."

to take courses in organization and management in other disciplines, such as business, engineering, education, and social-service work. For these courses, there are often prerequisites, the waiving of which might be considered by the professional schools in question.

(4) Effort should be exerted to meet the needs of an ever-increasing number of students who plan neither to teach nor to engage in research activities, but wish to enter the service of government or become active as leading citizens in public affairs. In view of present trends, it appears that public administration might well be included as a part of every political science curriculum, not from a mere vocational standpoint, but from the standpoint of the application of principle and theory to government in action. This implies that the time has come for a thorough re-examination of the scope of political science and of the departmental curricula designed to embrace the field.<sup>9</sup>

(5) Finally, vocational guidance is needed—vocational guidance based on knowledge of the facts. Political science most certainly does not have to be vocationally useful in order to be worth studying, but it is a pity for a professor or a placement officer to tell undergraduate students that they will have glorious governmental careers if they will just pursue plenty of college courses in "government." Faculty members and placement officers should familiarize themselves especially with the opportunities (and the lack of opportunities) for political scientists in federal employment.

*Some Things the Civil Service Commission Can Do.* Not all the blame for student unawareness of public-service opportunities can be placed at the door of the professor. The Civil Service Commission itself can do much toward integrating the colleges with the federal service. Within the last two years some progress has been made in this direction by the sending of Commission representatives to some of the larger universities.

Specifically, we think the Civil Service Commission should effect three key improvements, namely:

(1) The Commission should give adequate information, statistical and otherwise, on federal employment. This means maintaining and publishing accurate statistics on the number (by types, by grades, and by agencies) of various categories of positions in the federal service; also statistics of examinations therefor, and the opportunities (and lack of opportunities) for potential holders of such positions. A start was made two years ago to

<sup>9</sup> A start along this line has been made by a committee under the chairmanship of Dr. Ernest S. Griffith, a round table at the 1940 meeting of the American Political Science Association being held on the subject of "The Relation of Political Science to the Other Social Sciences." Another committee, headed by Professor Joseph P. Harris, has studied the relation between federal officials and political scientists, and its report, in somewhat abridged form, will be found on pp. 333-343 below.



compile some of the statistical information, but little has been released to the public. Also, some work has been done on employment opportunities, but the findings, too, have not been published. Interested students ought to know what the federal government has to offer.

(2) The Commission should formally tell of its plans and of the approximate content of its examinations as much in advance as possible, in order that students may plan and faculties may guide. The examinations themselves should be held annually and early enough in the year so that offers of federal employment can be made before graduation time.

(3) It is understood that the Commission has created the position of principal examiner in public administration, and is in process of recruiting some one for it. His status should be on a par with that of the principal examiner in economics, engineering, and law, each of which carries a starting salary of \$5,600 and has a limit of \$6,400. This official should be called upon to devote part of his time to supervising examining work in public administration and the remainder to visiting universities and colleges (not unlike representatives of great industrial concerns), undertaking pertinent research and preparing the results for publication, advising on printed material released for the information of the public or for the announcement of examinations—in short, to studying improved methods of attracting and selecting top-flight men and women for the service of the government of the United States.

FREDERICK M. DAVENPORT, LEWIS B. SIMS, *et al.*

## INTERNATIONAL AFFAIRS

**The Legal Status of Albania.** On April 7, 1939, the Italian news agency, Stefani, announced officially that Italian troops had landed in Albania. Having overcome some resistance, they entered Tirana, the capital, the following day and then rapidly completed the occupation of the country. An attempt at legal justification followed this military action.<sup>1</sup> The Italian press announced that after the landing of troops an Albanian provisional committee, quickly formed, convoked an Assembly composed of delegates from all Albanian provinces. On April 12, 1939, this Assembly, having vested itself with full powers, declared the decadence of the preceding régime and offered the crown of Albania to the king of Italy. The Italian law of April 16, 1939, n. 580, declared that the king of Italy, having accepted the crown of Albania, assumed for himself and for his successors the title of King of Italy and Albania, Emperor of Ethiopia.<sup>2</sup> Then followed a series of measures legally entrusting Italy with full control over Albania.

From the political point of view, the events of April, 1939, did not introduce considerable modifications in the relations between Italy and Albania. It was generally conceded that for several years Albania had actually been under the full control of Italy. As far back as November 27, 1926, the two countries had concluded a Pact of Friendship and Security, providing that "any disturbance threatening the political, legal, and territorial status quo in Albania was contrary to their common interests" (Art. 1).<sup>3</sup> Italy and Albania also undertook "not to conclude with other powers any political or military agreement prejudicial to the interests of the parties" (Art. 2).<sup>4</sup> A letter accompanying the treaty gave Italy the right to intervene, on Albania's request, in the country's foreign and domestic affairs. On November 22, 1927, the parties concluded an "unalterable defensive alliance" for 20 years. In case of conflict, each of the contracting parties undertook "to throw in its lot with the other and to place at the disposal of its ally all military, financial, and other resources which may be of assistance in terminating the conflict, should such assistance be called by the threatened party" (Art. 1). The parties were bound "not to enter into negotiations for a peace, armistice, or truce except by common consent" (Art. 2). This treaty also was accompanied by an explanatory letter.

<sup>1</sup> The author is deeply indebted to Professor Giambattista Rizzo's *La Unione dell'Albania con l'Italia e lo Statuto del Regno d'Albania* (1939). Professor Rizzo's study contains a very valuable analysis of the legal problems considered herein.

<sup>2</sup> This new formula is to be used in the title of Italian laws and judgments (Ital. law, May 5, 1939, n. 660). The Great Seal of the Italian State has been modified to bear the new title (Ital. royal decree, June 1, 1939, n. 876).

<sup>3</sup> The pact and the explanatory letter are published in 60 *Treaty Series of the League of Nations*, p. 27.

<sup>4</sup> The treaty and the explanatory letter are published in 69 *Treaty Series of the League of Nations*, p. 343.

In view of the overwhelming disproportion of forces between Italy and Albania, these agreements were obviously intended completely to subordinate Albanian foreign policy to that of Italy. It was currently understood that Albania was actually an Italian protectorate.

In fact, the control of the international relations of Albania was coupled with the other typical element of a protectorate relationship, i.e., the interference of the protecting state with the domestic affairs of the protected subject. The Bank of Albania, established in 1924 as the bank of issue of the country, was under the presidency of an Italian and controlled by Italian capital. Italian enterprise and capital built highways, the ports of Valona and Durazzo, and the governmental section of Tirana, exploited the oil fields, managed the airlines, and developed the agriculture of the country. Italian instructors were appointed to organize the army and the police. Under Italian auspices, Achmed Zog was proclaimed king of the Albanians in 1928. By exchange of notes of June 26, 1931, Italy granted a loan to Albania, and a mixed Italian-Albanian commission was appointed to supervise the expenditure of the money, which was to be invested almost completely in public works contracted by Italian firms. The loan was never repaid, and on March 16, 1936, several economic agreements sanctioned the economic and financial dependency of Albania upon Italy.<sup>5</sup> That Albania had become a satellite of Italy was demonstrated at the period of the sanctions against Italy, by her attitude as a member of the League of Nations. In view of the preëxisting hegemony of Italy over Albania, the military expedition of April, 1939, appeared to many people an unnecessary and ostentatious act of force, and gave rise to considerable political speculation as to its real motives.<sup>6</sup>

If not the political, the legal relationship between Italy and Albania and the legal status of the latter were deeply affected by the events of April,

<sup>5</sup> The agreements are the following: (1) convention for the port of Durazzo; (2) agreement for settlement of the financial situation of the Albanian state; (3) agreement for liquidation of the loan of June 26, 1931; (4) agreement for agricultural loan of 10 million gold francs; (5) agreement for loan for the establishment of the Albanian Tobacco Monopoly; (6) provisional commercial agreement. These agreements are published in the *Dictionnaire de Droit International*, issued by the Académie Diplomatique, Vol. III, without date, in an appendix to the article "Albania."

<sup>6</sup> The hypothesis was advanced that the Italian government intended to counterbalance the action of the other Axis partner, who, a few weeks earlier, had invaded what remained of Czechoslovakia. It was also suggested that the invasion might have been intended to warn the other Balkan states not to join the British-French coalition. Nor was there lack of suggestion that the Italian government desired to gain a cheap success to bolster its domestic prestige. The official Italian explanation, i.e., that the intervention was provoked by an attempt of King Zog of Albania to create a misunderstanding between Italy and Jugoslavia, does not appear to have been convincing.

1939. Provision was made for these changes by the conclusion of a series of international agreements between Italy and Albania and by the enactment of several domestic measures within the two countries. The most important acts were the following:

(1) *International Agreements.* (a) An agreement of April 20, 1939, concerning the rights of the respective citizens, by which Italian citizens in Albania and Albanians in Italy enjoy all the civil and political rights which they enjoy in their respective national territories. (b) An economic, tariff, and currency convention of April 20, 1939, by which the kingdoms of Italy and Albania were linked together in an economic union, both countries forming only one territory for the purpose of the application of the tariff law. Italy was entrusted with authority to conclude tariffs and other economic and currency agreements for the Union. A supplementary convention was signed on May 28, 1939, to regulate some technical details. (c) A treaty of June 3, 1939, by which the management of the diplomatic and consular services of Italy and Albania was unified and concentrated in the Italian Ministry of Foreign Affairs. (d) A tacit agreement, resulting from a resolution of the Albanian Council of Ministers of May 26, 1939, and from the Italian law of July 13, 1939, n. 1115, which merged the armed forces of Albania with corresponding Italian forces.

(2) *Domestic Measures.* (a) An Italian law of April 16, 1939, n. 580, creating the office of General Lieutenant for Albania, residing in Tirana and representing the king in Albania. Besides being an organ of the Italian state, the Lieutenancy is also an Albanian organ, provided for in the Albanian constitution (Art. 12). (b) An Italian royal decree of April 18, 1939, creating the office of Under-secretary of State for Albanian Affairs within the Italian Ministry of Foreign Affairs. (c) A new Albanian constitution, granted by Victor Emmanuel, in his capacity of king of Albania, on June 3, 1939. (d) An Albanian decree of June 2, 1939, issued by the General Lieutenant, approving the by-laws of the Albanian Fascist party. (e) In order to complete the union between the two countries, several Albanians in Italy were appointed members of the Senate, of the Foreign Service, and of the Academy of Italy; some were appointed army officers and university professors. Italian officials were also appointed counselors in the Albanian ministries.

The union of Italy with Albania gives rise to several legal problems.

(1) It is a well-established principle of international law that a constitutional change, however profound, does not affect the international status of a state. If the events of 1939 consisted only in a change of régime, this by itself would not have produced the extinction of the Albanian state. In order not to arouse the susceptibilities of the Albanian people, it seems to have been the desire of Albania and Italy that the former should continue to be considered an international subject. The present Albanian

state is assumed to have a complete social, political, and economic organization; it has its own name, flag, official language, national bank, currency, and stamps. Subsequent to the events of April, 1939, Albania concluded the above-mentioned conventions with Italy, which presupposed mutual assumption of Albania's status as an international subject. In their preambles, the Italian-Albanian conventions of April 20, 1939, declared that they were aimed to establish coöperation between the two countries "within the framework of the sovereignty of the respective states." After the Italian invasion, international acts were also performed by Albania with regard to international subjects other than Italy.<sup>7</sup> On April 13, 1939, Albania notified the League of Nations of her withdrawal. Her capacity to perform such an international act did not give rise to any objection. According to some sources, the Albanian declaration of war against Great Britain, in June, 1940, came later and independent from that of Italy.<sup>8</sup>

(2) The above-mentioned international and domestic acts were aimed to establish an international union between Italy and Albania. Though the crowns of Italy and Albania are separate, the Italian law of April 16 1939, n. 580, and Art. 1 of the Albanian constitution, which make the crown of Albania hereditary in the dynasty of Victor Emmanuel of Savoy, imply a tacit understanding between Italy and Albania that the crown of Albania shall always and only be vested in the Head of the Italian State. Furthermore, the above-mentioned international and domestic acts create a unified organization for the satisfaction of the common interests of the two countries in the field of economics, tariffs, and currency affairs, of international relations, and of external defense. The Italian-Albanian union is therefore not a "personal union," similar to that which existed from 1714 to 1837 between Great Britain and Hanover, which were linked together during that period by the accidental and non-prearranged fact that they had the same individual as monarch. The new union should rather be considered a "real union" such as those which existed between Sweden and Norway and between Denmark and Iceland, where the community of the head of the state was prearranged and presupposed a wide coöperation between the members of the Union for several common purposes. In the absence of any provision for termination or dissolution, the Italian-Albanian union is to be perpetual and permanent. The Union is devoid of all agencies, its international relations being carried on by Italy, who acts through her own organs for herself and as an agent for Albania.<sup>9</sup> Because of

<sup>7</sup> On the contrary, in the case of Austria, annexed by Germany on March 13, 1939, the notification to the League of Nations that Austria's membership had ceased on March 13, 1939, was addressed by Germany.

<sup>8</sup> *New York Times*, June 16, 1940.

<sup>9</sup> See Sereni, "Agency in International Law," *American Journal of International Law*, Vol. 34 (1940), p. 640.

the absence of its own organs, the Union must be considered not to possess an international personality separate from that of its two members.

(3) The most peculiar feature of the Italian-Albanian union, which also confirms its character as a real union, is the prearranged community of régime between the two members.<sup>10</sup> Membership in the Union presupposes the acceptance by Albania of the political and constitutional doctrines and institutions of the senior partner. Art. 1 of the Albanian constitution defines Albania as a constitutional monarchy. However, the truth is that the king of Albania is vested with unusually extensive powers, comprising most of the exceptional powers that in Italy are entrusted to the head of the government. In Albania, it is the king alone who imposes upon the state its political direction. He exerts his powers through the General Lieutenant. There exists a legislative assembly, whose rôle is to coöperate with the king in the exercise of the legislative function (Art. 5 of the constitution), but the actual importance of the parliament is negligible. Practically, the reorganization and most of the present activities of the Albanian state are carried on through decrees of the General Lieutenant. These decrees are executive acts, having the effect of laws, and are only subsequently converted into formal laws by the Albanian parliament. The king is assisted by a council of ministers, whose president is not entrusted with special powers. The ordinary affairs of the state are transacted through the ministries.

The Fascist character of Albania is especially apparent in the fact that it is a single-party state, the Albanian Fascist party being the only party tolerated. The structure of this party and of its auxiliary organizations is copied from that of the Italian Fascist party and of its corresponding auxiliary organizations. The concentration of almost every power in the executive, the negligible function of the parliament, and the single-party system are the main elements which impress the Albanian state with the character of totalitarianism. A series of accessory provisions emphasize this aspect of the new régime: the legislative assembly is called the Fascist Corporative Council; the Albanian flag was modified by inserting in it the symbol of the fasces. One might venture to state that the new Albanian régime is even more fascist than the Italian régime: in fact, being a creation *ex novo*, impressed by a sudden and powerful act of force, the Albanian régime did not have to overcome gradually the historical and political resistances with which Italian fascism was confronted. Furthermore, the Italian manipulators of the new Albanian régime availed themselves of the previous political and constitutional experience of Italian fascism.

(4) The principle of international law concerning the equality of states was apparently respected in the union of Italy and Albania. On April 15, 1939, the Head of the Italian Government declared that "Albania entered

<sup>10</sup> See Rizzo, *La Unione*, *cit.*, p. 37.

as an equal in the Italian imperial community." An Italian announcement of April 18, 1939, declared that the new relationship of Italy and Albania was to be based upon the "fact of the independence and sovereignty of Albania." Actually, with regard to the union of Italy and Albania, the concept of legal equality between the partners is devoid of any practical significance. Albania is completely under the hegemony of Italy. By means of the international representation of Albania, Italy dominates the foreign policy of the former. Through the authority of the General Lieutenant, Italy directs the whole political, administrative, and legislative life of the Albanian state. Through the action of the Fascist party, Italy regiments the Albanians and controls their political allegiance. In fact, the Albanian Fascist party depends on the Italian Fascist party. In a note which preceded the publication of the by-laws of the Albanian Fascist party, it was authoritatively stated that this party was "neither autochthonous nor autonomous, but an affiliation of the [Italian] Fascist party." By Italian royal decree of July 9, 1939, n. 1027, the by-laws of the Italian Fascist party were modified to make the Secretary of the Albanian Fascist party a member *ex officio* of the Council of the Italian Fascist party. In line with the subordination of the Albanian state to the Italian, there has been effected a corresponding subordination of the Albanian Fascist party to the Italian Fascist party. This is especially important since both parties are, in their respective countries, the only authorized political parties and are also quasi-statal organizations. Furthermore, it was Albania that accepted as her king the king of Italy and that was actually included within the Italian tariff sphere; it was the Albanian army that was incorporated in the Italian army. Especially in this latter aspect, the union of Albania and Italy assumes some characteristics of a vassal relationship. A precedent can be found in the case of the suzerainty of Turkey over Egypt, which suzerainty, toward the end of its existence, was based chiefly upon the apportionment of the Egyptian forces to the Turkish army.

(5) This brings us to the question of whether Albania may still be considered a subject of international law. If the technical-formal conception of the international personality of the state, which up to now has prevailed, is still to be accepted, no doubt can be entertained that Albania is still a subject of international law. It may be alleged that Albania has a political organization, a territory, a population, and the capacity to carry on international relations, even though she has delegated this power to Italy. However, if we cut through the veil of legal fictions so as to reach the root of the relationship between Italy and Albania, it appears that the Albanian state which existed prior to April, 1939, now remains only an empty shell. Albania, in fact, is only an annex of Italy; it exists only in function and for the advantage of the latter. In harmony with the princi-

ple that the controlling state is responsible for the international wrongs of the controlled state, Italy may certainly be held liable for the international wrongs committed by Albania, even where the latter is to be considered a subject of international law. But relying upon the fiction of the separate existence of the two states, Italy may disclaim every responsibility for the pecuniary international obligations of Albania prior to the Italian intervention, on the ground that there has been no international extinction of Albania and no succession of Italy. In every international union in which both Italy and Albania are members, Italy from now on will practically control two votes, hers and that of Albania. In a war in which Italy is a party, it may be convenient for her to keep Albania neutral, in order that the Albanian oil fields may continue to produce much-needed oil for Italy without danger of Albania being bombed.<sup>11</sup> These are only a few possible consequences of such an anomalous situation. If the conclusion that Albania is still an international subject is to be accepted, the inference is irresistible that the traditional rules of international law are inadequate to meet the new situations arising from the activities of the totalitarian states. Multiplication of situations analogous to that of Albania, in consequence of the occupation or control by the Axis Powers of apparently independent states, should, then, bring about the establishment of new rules of international law to take cognizance of these questions and of their possible consequences.

ANGELO PIERO SERENI.

*New York City.*

**The Commission to Study the Organization of Peace.** In the "battle of committees"<sup>1</sup> which has raged over the foreign policy of the United States in recent months, the committees which have played the most active and most publicized rôles have been such propaganda groups as the Committee to Defend America by Aiding the Allies,<sup>2</sup> the America First

<sup>11</sup> On June 16, the Albanian Fascist Corporative Council ratified a decree providing (Art. 1) that: "The Kingdom of Albania considers itself at war with all nations against which Italy is at war—at present or in the future" (*New York Times*, June 16, 1940). However, this is not an international act, but a domestic act which can always be repealed.

<sup>1</sup> For summaries of the "battle" and descriptions of the committees involved, see *Newsweek*, Dec. 30, 1940, pp. 9-10; *Time*, Dec. 23, 1940, p. 13, and Jan. 6, 1941, pp. 11-12.

<sup>2</sup> Organized in May, 1940, with William Allen White as chairman and with headquarters at 8 West 40th Street, New York City. On May 17, 1940, Mr. White sent telegrams to various people inviting them to serve on such a committee, and on May 20, 1940, the formation of the committee was announced.



Committee,<sup>3</sup> and the No Foreign War Committee.<sup>4</sup> Such groups have left untouched an important task: careful, sober research into the problems which the organization of peace presents to the American people. This latter task, however, has not been wholly neglected. A Commission to Study the Organization of Peace, initiated by Professor James T. Shotwell of Columbia University in the fall of 1939, has undertaken at least a part of the task. Its methods of functioning, its work, and its objectives are of current interest to political scientists, and the present note is intended to call attention to the more important features of the Commission's work.

In a statement published in December, 1939, the Commission stated that its objective was to assist the American people in thinking through "the fundamental bases of lasting peace." It proposed to do this by making a critical survey of the factors involved in the organization of peace. The statement added a few words as to the Commission's methods of approach: "The Commission will first study the fundamental principles of the problem before us, including such subjects as the economic interdependence of peoples, the changing nature of war and its effects in our world, and the experience and experiments since the World War of 1914-18. Coming to the heart of the problem, the Commission will consider the world we want, a world of justice and peace, and the means of arriving at these ends. The problem will be viewed from political, economic, and social angles. Lastly, of course, there must be faced the problem of the rôle of the United States in dealing with these profoundly vital questions. It is not enough, however, for a group of experts in this or any other country to reach agreement as to the bases of a lasting peace. People everywhere must be studying the same problems and reaching their own conclusions. Popular education in this field is an essential part of the effort."<sup>5</sup>

The formation of the Commission was sponsored by the American Association of University Women, the American Union for Concerted Peace Efforts,<sup>6</sup> the Church Peace Union,<sup>7</sup> the League of Nations Association, and the World Citizens Association.<sup>8</sup>

<sup>3</sup> Organized in September, 1940, with Brig. Gen. Robert E. Wood (retired), chairman of Sears, Roebuck & Co., as chairman, and with headquarters at 1806 Board of Trade Building, Chicago. *New York Times*, Sept. 25, 1940, 13: 2; Nov. 13, 10: 5.

<sup>4</sup> Organized in December, 1940, with Verne Marshall, editor of the Cedar Rapids (Iowa) *Gazette*, as chairman, and with offices at 100 East 42nd Street, New York City, and Cedar Rapids, Iowa.

<sup>5</sup> Pamphlet issued by the Commission. See also *Christian Science Monitor*, Jan. 2, 1940; *New York Herald-Tribune*, *New York Times*, and *New York Sun*, Jan. 3, 1940.

<sup>6</sup> This Union grew out of an earlier Committee for Concerted Peace Efforts. It was organized on Mar. 30, 1939, for three purposes: to oppose aggression, to promote economic justice between nations, and to develop adequate peace machinery. On the outbreak of the war in Europe, the Committee for Concerted Peace

Invited to associate themselves as members of the Commission were scholars,<sup>9</sup> government officials,<sup>10</sup> business men and lawyers,<sup>11</sup> and at least one labor leader.<sup>12</sup> The specific subjects which were regarded as a part of the problem of organizing peace were assigned to various members; reports on these subjects were drafted by the respective members; and the Commission as a whole debated the principal reports. It was anticipated that the reports, as amended in Commission debate, would be published as chapters of one or more books. Plans at the present, however, are to publish the studies in the *International Conciliation* Series of the Carnegie Endowment for International Peace.

While the scholars were at work on their reports from November, 1939, to June, 1940, the executive committee of the Commission promoted scores of study groups throughout the country<sup>13</sup> which utilized an outline of the

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Efforts organized the Non-Partisan Committee for Peace through Revision of the Neutrality Law. Honorary vice-presidents of the Union are James T. Shotwell, Mary E. Woolley, Charles G. Fenwick, and G. Ashton Oldham. The director is Clark M. Eichelberger. Headquarters are at 8 W. 40th Street, New York City.

<sup>7</sup> Founded in 1914 by Andrew Carnegie.

<sup>8</sup> Organized in 1939 with headquarters at 86 East Randolph, Chicago, Illinois. Ray Lyman Wilbur, Palo Alto, California is chairman; Quincy Wright, Chicago, is secretary.

<sup>9</sup> Among the scholars associated with the Commission are Frank Aydelotte, Clarence A. Berdahl, Kenneth Colegrove, Francis Déak, Marshall Dimock, Clyde Eagleton, Brooks Emeny, Charles G. Fenwick, Denna F. Fleming, Benjamin Gerig, Harry D. Gideonse, Carter Goodrich, Frank P. Graham, S. G. Inman, Philip C. Jessup, Walter H. C. Laves, Frank Lorimer, William P. Maddox, William A. Neilson, Oscar Newfang, Ernest M. Patterson, Frederick Schuman, Walter R. Sharp, Smith Simpson, Preston Slosson, Eugene Staley, Waldo Stephens, Sarah Wambaugh, and Quincy Wright.

<sup>10</sup> Among the government officials are Donald C. Blaisdell (U. S. Dept. of Agriculture), Marshall Dimock (U. S. Dept. of Labor and latterly U. S. Dept. of Justice), Katherine Lenroot (U. S. Dept. of Labor), and Charles P. Taft (Cincinnati, Ohio City Council).

<sup>11</sup> Among the business men and lawyers are Dana C. Backus (lawyer, New York City), John F. Dulles (lawyer, New York City), Lucius R. Eastman (business man, New York City), Henry I. Harriman (business man, Boston), Walter Lichtenstein (banker, Chicago), F. C. McKee (business man, Pittsburgh), Hugh Moore (business man, Pennsylvania), W. W. Waymack (newspaper man, Des Moines), and William Allen White (newspaper man, Kansas).

<sup>12</sup> Robert J. Watt, international labor representative of the American Federation of Labor. Because "women have so far played an inconspicuous part in the efforts of the Commission to Study the Organization of Peace," Mrs. Edgerton Parsons, member at large of the executive committee of the National Council of Women, made a survey of what the members of the National Council of Women were thinking on the subject of organizing peace. A digest of the opinions expressed during the survey was forwarded to the chairman of the Commission. *New York Times*, May 26, 1940.

<sup>13</sup> No accurate record of the number of study groups is available. Judging from

problems to which the Commission directed its own study,<sup>14</sup> and also inaugurated a series of weekly nation-wide broadcasts over the Columbia Broadcasting System. In fifteen such broadcasts, Dr. Shotwell, C. M. Eichelberger, S. G. Inman, C. G. Fenwick, Roger S. Greene, Clarence K. Streit, Ernest F. Tittle, Eugene Staley, and Robert J. Watt discussed the following subjects: the changing nature of war, the aftermath of the World War, disarmament, existing international institutions, the problems of the Americas and the Far East, an inter-democracy federal union, the possible bases of organizing peace in Europe, peaceful change, peace enforcement, markets and raw materials, and the possibilities of world organization.<sup>15</sup> Each broadcast was preceded by a student round-table discussion over the Columbia Broadcasting System on the problems of organizing peace; and as an added incentive to popular discussion, the Commission offered three prizes totaling \$600 for the best recommendations on how to organize peace.<sup>16</sup> In sympathetic response to the work of the Commission, the American Academy of Political and Social Science published *European Plans for World Order*.<sup>17</sup>

From November 5, 1939, to May 19, 1940, six plenary meetings of the Commission were held to discuss specific analyses and reports submitted by members on their assigned topics. Some thirty-three reports were submitted, and the more important ones were discussed in the plenary sessions.

The formation of the Commission received somewhat limited newspaper notice, and its announced program of study evoked both approving and skeptical comment. "It will be an interesting experiment," commented the

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the number of study kits prepared by the Commission and ordered from it, probably 400 groups followed the course. Letter from Margaret Olson, secretary of the Commission, January 30, 1941.

<sup>14</sup> *Study Outline on the Organization of Peace*, Jan., 1940.

<sup>15</sup> The broadcasts occurred on the following dates: Jan. 27, 1940; Feb. 3, 10, 17, 24; Mar. 2, 9, 16, 23, 30; Apr. 6, 13, 20, 27; and May 11. A separate broadcast occurred on Nov. 9.

<sup>16</sup> *New York Times*, Feb. 26, 1940; *Christian Science Monitor*, Feb. 27, 1940. The announcement was rather widely carried in the press, appearing also in the *New York Herald-Tribune* and the *Washington (D. C.) Post*, Feb. 26; and the *Cincinnati (Ohio) Post*, Apr. 23. Winners of the prizes were announced by the Commission on Oct. 7, 1940. First prize was given to the International Relations Group of Smith College, Northampton, Massachusetts; second prize to the Montclair Forum of Montclair, New Jersey; and third prize to a student group at Columbia University. The Commission's committee on award consisted of Dean Virginia Gildersleeve, of Barnard College; Professor Denna F. Fleming, of Vanderbilt University; and President Ernest H. Wilkins, of Oberlin College.

<sup>17</sup> Edited by William P. Maddox. Also at least one public lecture series—that sponsored by the departments of politics and government of Bryn Mawr, Haverford, and Swarthmore Colleges—owed much of its inspiration to the Commission. *New York Times*, Jan. 19, 1941, II, 5: 3.

*Columbus (Ohio) State Journal*, "though we hardly expect much to come of it," adding more approvingly: "It is to be remarked that the problem is not approached from the standpoint of pacifists, and that members of the organization belong to no one political party, section of country, race, or religion."<sup>18</sup>

At the date of this writing, the only publication which the Commission as a whole has issued is a *Preliminary Report*, issued in November of last year.<sup>19</sup> This document consists of a general statement of the effects of science upon the international life of the world and of the need for international institutions to solve international problems. The international institutions recommended are: "(1) an international court with jurisdiction adequate to deal with all international disputes on the basis of law; (2) international legislative bodies to remedy abuses in existing laws and to make new law whenever technical progress requires the adjustment of international practice; (3) adequate police forces, world-wide or regional, and world-wide economic sanctions, to prevent aggression and to support international covenants; (4) international machinery with authority to regulate international communication and transportation and to deal with such problems as international commerce, finance, health, nutrition, and labor standards, in regard to all of which the successful working of the constitution of the International Labor Organization offers valuable lessons; and (5) appropriate authorities to administer backward areas ceded to the world federation. Such administration should give precedence to the interest of the inhabitants of the area, looking to their eventual self-government; should assure all nations equal economic opportunity within the area; and should facilitate colonization and economic development of areas suitable for that purpose without injury to the native inhabitants. International corporations might well be encouraged to enlist world-wide support for the constructive task of developing such areas under supervision of such authorities."<sup>20</sup>

Such institutions, the Commission stated, implied certain limitations upon sovereignty which nation-states must accept, viz., "(a) nations must renounce the claim to be the final judge in their controversies with other nations and must submit to the jurisdictions of international tribunals. The basis of peace is justice; and justice is not the asserted claim of any one party, but must be determined by the judgment of the community; (b) nations must renounce the use of force for their own purposes in rela-

<sup>18</sup> Jan. 15, 1940. See also *Montana Standard* (Butte), Jan. 31, 1940; *Allentown (Pa.) Call*, Feb. 1, 1940; *Raleigh (N. C.) News-Observer*, Apr. 19, 1940. For news articles announcing the formation of the Commission, see *Christian Science Monitor*, Jan. 2, 1930; *New York Herald-Tribune* and *New York Times*, Jan. 3, 1940.

<sup>19</sup> Commission to Study the Organization of Peace, *Preliminary Report*, Nov. 1940.

<sup>20</sup> *Ibid.*, pp. 12-13.

tions with other nations, except in self-defense. The justification for self-defense must always be subject to review by an international court or other competent body; (c) the right of nations to maintain aggressive armaments must be sacrificed in consideration for an assurance of the security of all, through regional and world-wide forces subject to international law and adequate to prevent illegal resort to international violence; (d) nations must accept certain human and cultural rights in their constitutions and in international covenants. The destruction of civil liberties anywhere creates danger of war. The peace is not secure if any large and efficient population is permanently subject to a control which can create a fanatical national sentiment impervious to external opinion; and (e) nations must recognize that their right to regulate economic activities is not unlimited. The world has become an economic unit; all nations must have access to raw materials and its manufactured articles. The effort to divide the resources of the world into 60 economic compartments is one of the causes of war. The economic problem arising from this effort has increased in gravity with the scientific and industrial progress of the modern world."<sup>21</sup>

The "Preliminary Report" received moderate publicity in the press, receiving sizable news space in the *New York Times*, *New York Herald-Tribune*, *New York Sun*, *Louisville Courier Journal*, *Christian Science Monitor*,<sup>22</sup> and attention in nine other papers.<sup>23</sup> In four newspapers, editorial comment was aroused by the report, ranging from the skeptical to the approving.<sup>24</sup> The *New York Herald-Tribune* thought that the Commission had taken too theoretical a view of its problems, suggesting that the recommended institutions could come only as a result of strong nations utilizing their economic policies so as to promote international coöperation. "In the dawn of a British victory," read the editorial of the *Herald-Tribune*, "it will be economic questions—the feeding and reconstruction of a shattered Europe, the revival of industry, the restoration of markets—which will be crying most imperatively for settlement, which will indicate the lines along which the machinery of international organization must develop, and will supply the pressure that will secure genuine consent to the erection of such mechanisms."

The *Preliminary Report* marked a turning point in the work of the Commission. It served as the basis of a second study outline, based on the Report, and entitled *A Study of the Organization of Peace*, which, like the

<sup>21</sup> *Ibid.*, pp. 11–12.

<sup>22</sup> In issues for Nov. 12, 1940.

<sup>23</sup> *Rochester* (N. Y.) *Times-Union*; *Duluth* (Minn.) *News-Tribune*; *Kansas City* (Mo.) *Star*; *Oklahoma City Oklahoman*; *Omaha World-Herald*; *Bronx* (N. Y.) *Home News*; *Meriden* (Conn.) *Record*; *Brooklyn* (N. Y.) *Eagle*, and *Hackensack* (N. J.) *Bergen-Record*, all of Nov. 12, 1940.

<sup>24</sup> *New York Herald-Tribune*, Nov. 13, 1940; *Louisville* (Ky.) *Courier-Journal*, Nov. 13; *Helena* (Mont.) *Independent*, Nov. 16; and *Syracuse* (N. Y.) *Post-Standard*, Nov. 18.

first, is being used by the coöperating study groups. A new series of radio talks is also being planned which will emphasize that, whatever the contribution which the United States may make to the victory of Great Britain, it "will not save democracy, nor will it give us the peace we need; it will leave the world, including ourselves, upon a totalitarian basis, continuously preparing for the next war—unless we organize the world to prevent war."<sup>25</sup> It is planned, finally, as a part of the educational work of the Commission in coming months to broaden the Commission's geographic basis by establishing regional committees in such places as Chapel Hill, Dallas, and San Francisco.

Liaison with other research and educational groups has been somewhat neglected. With the object of repairing this deficiency, an associate director of the Commission has been appointed.<sup>26</sup> To facilitate this work, the Commission is exploring the possibilities of publishing bulletins from time to time, giving information as to what is being done by other groups and reprinting as far as possible the reports of such groups.

It has recently been proposed to the Commission by its executive committee that the next program of research to be undertaken be the transitional problems which will arise in the immediate aftermath of the war. Embraced in this program would be studies concerning political direction during the transition period, economic readjustments, health and nutrition, migration and resettlement.<sup>27</sup>

To date, it cannot be said that the Commission has more than scratched the surface of the tasks to which it at first addressed itself. It has been more successful in its educational work than in its research; it has done more to keep people aware of the problems of peace than in examining those problems in detail. There are fundamental questions underlying the organization of peace which need critical examination, and only a few of the Commission's reports have been permitted, by space and time limitations, to undertake such an examination. Even so, the significance of the Commission is worthy of attention. Of all the groups and committees seeking to influence American foreign policy, it is the only one that is striving, at least, to examine in connected and systematic fashion the problems of organizing peace.

The Commission brings to mind the "Inquiry" which prepared materials for use at the Paris Peace Conference.<sup>28</sup> There are obvious differences.

<sup>25</sup> Statement of the Commission, "Proposed Series of Radio Talks," dated Dec. 20, 1940 (mimeographed).

<sup>26</sup> Benjamin Gerig, Haverford College. The director is Clark M. Eichelberger.

<sup>27</sup> Communication of Clyde Eagleton, chairman of the studies committee of the Commission, to members of the Commission, dated Jan. 21, 1941.

<sup>28</sup> It should be noted (Mar. 20, 1941) that various discussions are taking place within the Commission which may result in supplementary research programs to fill in some of the gaps left by the first research program.

The creation of the Inquiry<sup>29</sup> was at the instigation of Colonel House, who was in direct and personal touch with President Wilson. The present Commission has no such relation with the Roosevelt Administration. The Inquiry was started after the United States had entered the war of 1917, whereas the Commission was started to assist in the thinking of the American people about the issues of another World War long before the country might become involved in it. The Inquiry, also, was for the assistance of the Administration, whereas the Commission set for itself the task of assisting the thinking of the masses of the American people, distributing its material to scores of study groups and sponsoring radio discussions of the topics within its chosen area of research. Although not a committee for propaganda, the Commission has not sought to conceal its findings. A final difference between the Inquiry and the Commission is that the latter not only has assembled scholars, but has endeavored to enlist the thoughtful participation of persons who have had practical experience with existing international organizations. Thus, its membership includes Frank G. Boudreau and Benjamin Gerig, formerly of the League of Nations Secretariat; Henry I. Harriman, former president of the United States Chamber of Commerce, delegate to several sessions of the International Labor Conference, and member of the Governing Body of the International Labor Organization; and Robert J. Watt, international labor representative of the American Federation of Labor, delegate to several sessions of the International Labor Conference, and a member of the Governing Body of the International Labor Organization. Government officials, as noted above, are also members of the Commission.

SMITH SIMPSON.

*University of Pennsylvania.*

<sup>29</sup> For a description of the "Inquiry," see J. T. Shotwell, *At the Paris Peace Conference* (New York, 1937), Chap. 1. Bodies similar to the "Inquiry" were established also in Great Britain, France, and Germany. *Ibid.*, p. 14.

## INSTRUCTION AND RESEARCH

**Teaching Political Science in a World at War.\*** Writing in the October *Atlantic Monthly*, Paul P. Cram insists that "the task of our teachers at the present moment is one of the most terrible responsibilities in modern times." In less troubled eras, some of us would probably reply that teachers have little influence over college students, who are more interested in sex, football, and liquor than in democracy and war and peace. But Bismarck declared that the German history professor had more to do with winning the Franco-Prussian war than any other group in the Fatherland with the exception of the German High Command. And the fate of France demonstrates with terrible clarity the misfortune that may befall a nation if its people are mentally unprepared to meet existing emergencies.

American college students, the critics declare, are mentally unprepared to face the present crisis. They have no faith in democracy. They fail to regard fascism as evil. They have no principles or ideals for which they will struggle. They seem to doubt, according to the MacLeish formula, that a "free society of free men is worth fighting for."

This lack of moral conviction flows in part, they say, from the fact that students have been "misled" by their teachers. Mr. Lippmann charges that our universities have failed to educate young people for the world they live in. And Mr. Adler argues that "it is not from Hitler, but from the professors, that we shall ultimately be saved." More specifically, he insists that "the most serious threat to democracy is the positivism of the professors, which dominates every aspect of modern education and is the central corruption of modern culture."

Members of the Round Table agreed that many of the charges leveled at American youth and at higher education are gross exaggerations. To revert to the "all-some" argument, obviously not *all* college students have lost faith in democracy, and *most* young people still have *some* moral principles for which they will struggle. The picture undoubtedly has been falsely colored by the fact that a small but vociferous minority have controlled the press on many campuses and have received an undue share of publicity. Nevertheless, it must be recognized that from the present crisis

\* At the December, 1940, meeting of the American Political Science Association, the Round Table on Teaching Problems dealt with the implications of the world crisis for the teaching of government. The present attempt to synthesize the discussion flows from the fact that the problems treated were of interest to all teachers of political science. On some of the topics there was considerable disagreement. No member of the Round Table, therefore, should be held for the views expressed herein. The writer is merely presenting the trend of the discussion as he observed it. Round Table participants were Professors H. Schuyler Foster, Jr., Grayson L. Kirk, Rodney L. Mott, James K. Pollock, Kirk H. Porter, John A. Vieg, and Francis O. Wilcox, chairman. Professor Ralph E. Page acted as secretary. Miss Kathryn Durlinger was stenotypist.



flow certain implications for the teaching of government and for the philosophy which underlies our teaching.

To the extent that the charges are true, the political scientist, dealing with exceedingly dynamic materials and numerous controversial issues, must take his share of the blame. (The Round Table was inclined to frown upon the activities of instructors outside the department, such as the English teachers, who "speak so glibly about political issues without possessing an adequate background.") But why single out the professor when he constitutes but one part of the total picture? What about the home, the church, the press, the radio, the movies, the secondary schools, pressure groups, and other forces that go to mold the public mind? Most teachers are unable to maintain a position outside the *mores* of society. And if our teaching has leaned too far in one direction or another—pacifism, cynicism, irrational optimism—we were probably reflecting the temper of the times.

This was true in respect to war and peace. In the post-war feeling of revulsion against militarism, war was debunked not only from the lectern but from the pulpit, in the press, and over the air. The League of Nations and the Kellogg Pact lulled nations into a false sense of security, and people in the democracies refused to think in terms of war. It was not unnatural for members of the teaching profession to share, to a certain extent, the general optimism of the twenties and early thirties. But while numerous political scientists supported the cause of international organization, there were relatively few who failed to give adequate attention to the weaknesses of the peace system, the dangers of fascism, and the forces that make for war. An examination of the textbooks in the international field would seem to bear out that fact.

It was true, likewise, with respect to democracy. As the democracies fumbled about, in what many people considered a futile and half-hearted attempt to solve their problems, they attracted a certain amount of healthy criticism from all quarters. Youth, in particular, was realistic in its analysis. It appreciated, to be sure, the heritage of the democratic tradition. But did not democracy function, too often, as an institution for the protection of certain interest groups? And were there not hundreds of thousands of college students—unhappy, maladjusted, or unemployed—who found themselves unwanted additions to an uncertain society? They were willing to believe in democracy, but many of them longed for a practical demonstration—practical in terms of jobs, happiness, security, and responsibility for themselves.

1. *The Philosophy Underlying our Teaching.* Since the philosophy of liberalism has served as the guiding star for the teachers of government, the Round Table considered it essential to examine the possible results of liberal doctrines. Liberalism invites open criticism; it welcomes a free

examination of its fundamental precepts. Based upon the idea of progress through reason and the utilization of the scientific method, it suggests the objective sifting of available data before decisions are reached. It thus stresses the necessity for open-mindedness. It fosters individualism in social thought. It delights in an honest difference of opinion.

In relatively normal times, liberalism serves its constituency well. Yet it must be remembered that in times of great danger *some* modicum of agreement is necessary if effective action is to take place or if liberalism itself is even to be preserved. Too much emphasis on reason and cold logic may produce a public opinion completely unequipped to cope with the dynamic emotional force of less rational ideologies. Too much criticism may undermine the confidence of the people and result in a disheartening lack of unity and direction. Too much difference of opinion may merely set the stage for those resolute individuals with a program of action who are only too willing to take command of the state. And while it may be scholarly to debate the principles of navigation while the ship is sinking, it is probably not very sensible.

One possible weakness in the teaching of politics is the fact that teachers have too often delighted in exposing the sensational and the unusual features of our government. Machine politics, pork barreling, lobbying, "unproportional" representation, the jury system, election scandals, and similar juicy morsels have proved excellent subjects to arouse student interest. But motivated by our anxiety to lay bare existing evils and our desire to remedy existing weaknesses, we may have been *too* critical of our democratic institutions. Under this formula, democratic government *may* become, in the minds of some students, "bad" rather than "good"; the legislator *may* become a scheming scalawag and the politician another Boss Tweed. Cynicism, skepticism, and disillusionment *may* be the result.

It would, of course, be unrealistic to avoid examination of existing evils. But is it not just as unrealistic to fail to emphasize those praiseworthy features of the American system which have helped to provide security and happiness for a relatively large number of people? Even though they lack the glamor of filibustering and election scandals, would it not seem desirable to devote more time to the ordinary, day-by-day processes of legislation and administration, perhaps devising new techniques for making seemingly prosaic subjects interesting? With more stress on the typical and less on the unusual, we would undoubtedly leave the student with a truer picture of democracy in action.

The praiseworthy attributes of the democratic way might also be illuminated effectively by an increased use of the comparative method in government classes. Trial by jury, with all its defects, looms up as a real protector of human liberty when compared to the ruthless tactics of the OGPU. And few Americans would be willing to accept the German Reichs-

tag as a substitute for the House of Representatives—with all its shortcomings. In terms of fascist techniques, our institutions take on new meaning. But it is important that our liberal values—representative government, equality before the law, freedom of speech, etc.—be spelled out in concrete terms. They must not remain mere verbalisms.

Another result of liberalism is the fact that students may often become confused and lack conviction because there is so much disagreement on fundamentals among those within the teaching ranks. According to the Chinese proverb, you can put two people in the same bed, but you cannot make them dream the same dream. This seems to be especially true of professors. In one class-room, the students may hear a vigorous defense of America's basic institutions—judicial review, the written constitution, federalism, the Congress, our system of representation. The next hour, just across the hall, they may encounter a lecturer with just as many degrees who vigorously denounces those same institutions—who does not believe in federalism and who thinks the written constitution is outmoded. Both are scholarly teachers, both are sincere, both are patriotic. Since those who are supposed to know differ so widely among themselves, should we not expect some of our students to lack confidence?

The members of the Round Table regarded more unity of thought and action in the teaching ranks as socially desirable. Considerable agreement could probably be reached in respect to ultimate ends. We all ought to be able to agree, for example, on such general ideals as better housing facilities, wider distribution of income, and the democratic way of life. But on the means which should be used to attain those ends—federalism, concentration of governmental power, state ownership, etc.—there seems to be hopeless disagreement.

This predicament may be due to the simple fact that teachers of government, as a group, have never attempted to define their objectives, never determined the direction their teaching should take. Why not accept as desirable certain ultimate ends, such as the democratic way of life, and then carefully define those ends? Once the ends are defined, might it not be profitable to examine the extent to which agreement is possible upon the means? Perhaps we could minimize our differences far more than we do.

Some little disagreement appeared among Round Table members concerning the desirability of deliberately basing our teaching on democratic philosophy. One member vigorously protested the proposal that the "social sciences should be prostituted to the indoctrination of any set of political dogmas or any special interest." But does not the perpetuation and the perfection of democracy depend upon the wide acceptance of certain ethical and moral ideals? Would not the teaching profession be wise to accept these ideals as the point of departure for all its teaching and

consciously and collectively canalize its efforts in the interest of democracy? Must we wait, before making a decision, until all the data are in? Or can we afford to wait? This is a question for which the teachers of government must find an answer.

All this presupposes that it is the legitimate task of the political scientist to deal with the formulation of value judgments. Here again strong disagreement arose in the Round Table. One participant declared that "the inculcation of moral virtues, ethical ideals, or social values is a matter beyond the scope of the science of politics." Others held that education should be, to a very considerable extent, an exploration into the field of values, with the students choosing some and rejecting others as they go. And unless we expect this function to be carried out by the philosopher or the humanist, whose knowledge of the field may be limited, we must operate in the class-room not only as political scientists, but as political philosophers as well.

Few professors there are who can avoid a consideration of the "desirable" and the "undesirable," the "good" and the "bad." Conclusions, to be sure, may be couched in different language. Of two possible methods, for example, one may be judged, on the basis of available evidence, as more costly than the other, less efficient, less democratic, or less scientific. It would be most unfortunate if instructors were so completely objective that such judgments were not formulated, for then our colleges would be in real danger of becoming "beleaguered islands of open-mindedness," and our students would graduate to take their place as citizens without sincere convictions about anything—good material for the demagogue. But in stating our own opinions on controversial issues as emphatically as we wish, it is incumbent on us as teachers to present the opposing views clearly and adequately.

It becomes apparent, however, that some outer limits must be established within which the open-mindedness of liberalism is allowed to operate. It would be folly to permit liberal philosophy to be directed toward the destruction of liberalism itself. Perhaps, as one philosopher has suggested, we should tolerate everything but intolerance and hate nothing but hatred.

2. *The Realm of Teaching Procedure.* Turning to the realm of teaching procedure, the Round Table addressed itself to the cutting accusation that the teaching of government does not educate young people for the world they live in, that it is too far removed from the actual operation of our social order. Granted the possibility for improvement in this area, several helpful remedies suggest themselves.

In the first place, political scientists might well utilize more fully the laboratory facilities that our governments provide on the local, state, and national levels. It is a false assumption that the chemist and the

physicist must resort to laboratory exercises in order to demonstrate the basic principles of their respective disciplines while the political scientist need not do so. The tactics of the party machine, the psychology of voting behavior, and the workings of the long and short ballots take on new significance if they can be studied and observed in the natural context of an actual election. The none-too-exciting principles of legislation, administration, and judicial procedure become alive with interest and meaning when students, under competent supervision, visit the legislative chamber, the county poor home, and the district court. Listening to lectures may be helpful. But such activities as interviewing government officials, observing at the polls, or working for a short time at the city hall would undoubtedly give young people a much more vivid understanding of the operation of their government and a much keener appreciation of it.

There are certain practical obstacles, however, to the extension of the laboratory technique. One is the problem of sheer numbers. The biology department may buy microscopes and equip its laboratory for 500 students, but the extent to which the government laboratory may be utilized by such a large number is obviously limited. While government officials are usually willing to cooperate in making information available to interested students, they naturally object to having their day interrupted by huge swarms of freshmen seeking to interview them without adequate preparation. So far as graduate students and majors in political science are concerned, the matter is relatively simple. Yet it is the ordinary student, not merely the specialist in government, that we must reach by such procedures.

In part, this objection may be countered by exercising greater care in planning the projects. Details must be worked out carefully in advance. Additional instructors, in the form of laboratory assistants, may be necessary additions to the staff. All of which means that political science departments will have to convince administrative officials that laboratory work is essential to the better understanding of government. Up to the present, continued pressure by natural science departments has secured for these disciplines an undue share of the budget for laboratory work. Political scientists may need to resort to the great game of politics in order to reverse this unfortunate trend and secure adequate support for their ever-broadening programs. With the emphasis today on the need for a better understanding of democratic society and the desirability of training students for citizenship, this should not be difficult.

Furthermore, the teaching of government will become more realistic whenever a more realistic program of training teachers is adopted. In this respect, higher learning is woefully deficient in two ways. First of all, the graduate programs of most departments are geared to the development of research technicians rather than teachers of government. Too much

emphasis is placed upon the details of structure and function and too little upon a broad understanding of those processes—political, economic, sociological, psychological—necessary for the understanding of our society. Too much stress is placed upon research and too little upon teaching, too much upon securing the doctorate and not enough upon preparing the candidate for his life work.

Even more important is the fact that many teachers are not given the opportunity for assuring their continued competence to teach government in a rapidly changing world. As graduate students, we may have some contact with government in actual operation. Too often, however, after that initial encounter, we withdraw to our castle, pull up the drawbridge, and rarely venture forth again from the protection of the ivy tower.

In view of the dynamic character of our subject-matter, would it not seem desirable to encourage some program of in-service training for teachers of government? This might take the form of actual coöperation with government officials in the solution of civic problems, or projects which would necessitate working in the city hall, the state legislature, or the halls of Congress. More frequent leaves than most members of our profession are able to secure should be arranged. In any case, it is essential that political science teachers, if they are to handle their subject with realism and accuracy, establish and maintain active contacts with our government at its various levels.

From some members came the accusation that many institutions had failed to utilize the college campus in order to provide those experiences which might lead students to a real understanding and appreciation of democracy. The success of democratic government depends, to a large degree, on the ability and willingness of the people to participate actively in the governing process. There might well be ample experience in just such activity during four years of college life.

But too often college administrators have sacrificed democracy in favor of efficiency and expediency. Too often college teachers have functioned as benevolent dictators rather than democratic leaders. Too often, in the formulation and administration of rules and regulations, student participation has been frowned upon.

In emphasizing democratic techniques in higher education, the Round Table agreed that it would be both impractical and unwise for all classes to operate on the principle of free inquiry and free discussion. Many instructors may make their best contribution to the learning process by resorting to the lecture method. One member, especially, insisted that there is too much emphasis on the student learning by himself when his real purpose in coming to college is to get something from his instructor. "Students can read books, work on projects, study in libraries, listen to speeches, all the rest of their lives. In college during a few short years they

have a chance to get something from teachers. . . . Even if students sat with their arms folded and there were no libraries, we could have a university if the teacher did his part and made a real contribution."

There is a very real question, too, as to whether our colleges have provided the best possible background for an understanding of American government. Some members felt that the trend toward the introductory social science course in the liberal arts curriculum will have a wholesome influence. With such a background course, it is possible for the student to study government with the whole social scene as his constant frame of reference. Would it not seem more logical to examine the problems of constitutional revision and legislation *after* he has been introduced to the broader concept of social change? Or to study the conduct of American foreign policy *after* he has examined the nature of the state system within which our policy is formulated and executed? Or to probe the intricacies of party politics *after* he has learned the rôle of public opinion in American life?

Such a course should enable him, too, to understand government in its true perspective—as one of several interrelated disciplines each of which, without the aid of the others, is able to illuminate in only an incomplete way the world in which he lives. Under this formula, the human being becomes, not a political animal or an economic man, but a *social* animal. And the study of government takes on new meaning.

Finally, and a point which has relevance to all the topics discussed, political scientists have failed to utilize many of the newer techniques of evaluation which, if developed, should throw much light on the attitudes, abilities, interests, beliefs, and knowledge of our students. Armed with a better understanding of students, we should be in a much better position to diagnose their needs, stress those areas of learning and those experiences which call for special attention, and, in general, give real direction to our teaching. At present we know in only a crude way just what effect our course in American government has on those who sit in our class-rooms. Many of us, indeed, would be disappointed and chagrined if the results of our efforts were objectively measured. Logically, however, within limits, we might strive to perfect the following procedure: (1) determine the knowledge, skills, interests, and attitudes of our students at the outset; (2) decide what changes we hope to bring about by the course; and (3) measure, at the end of the year, the degree of success we have been able to achieve. Such a procedure would be facilitated if departments in various institutions would coöperate in the preparation and exchange of testing devices.

At the conclusion of the Round Table deliberations, it was moved, seconded, and voted unanimously by the audience present, that a resolution be presented to the American Political Science Association reminding

its members of their responsibilities as teachers and calling upon them to reaffirm their faith in democracy. A resolution was accordingly drawn up\* and read at the Business Meeting of the Association, where its adoption was unanimously urged upon the Executive Council. The resolution, which needs no comment, reads as follows:

*"Whereas: the American Political Science Association recognizes, in the present crisis, the unique responsibility resting upon its members for cultivating in the youth of this land an abiding faith in the democratic system of government,*

*(1) We rededicate ourselves to the continuing task of promoting an understanding of democracy, and generating confidence in its institutions;*

*(2) We call upon all our colleagues to honor now, with all the vigor at their command, their solemn obligation—as teachers, scholars, and citizens—to clarify the nature of those forces, external and internal, which are threatening the destruction of the democratic way of life;*

*(3) We record once more our conviction that democracy is justified in calling upon its people everywhere to defend it by word and by deed in whatever measure of devotion may prove necessary."*

FRANCIS O. WILCOX.

*University of Louisville.*

**The Relations of Political Scientists with Public Officials: Report of a Committee to the American Political Science Association.**<sup>1</sup> In the summer of 1939, President Charles G. Haines set up this committee and instructed it to study broadly the contribution which political scientists are making to government, their relations with public officials, and how these relations might be made closer and more effective. The problem assigned to the committee is one of great importance to the future of political science. The challenge to political scientists to make an effective contribution to the improvement of government processes and institutions was never so real and so great as it is today. The preservation of democratic institutions, in the long run, will depend in large measure upon scientific study and research, and intelligent, imaginative, and constructive consideration of governmental problems. If political scientists are not making their full contribution to the development and improvement of government—and we believe they are not—it is time to stop and take stock, and to set about

\* The formulating committee was composed of James K. Pollock, Kirk H. Porter, John A. Vieg, and Francis O. Wilcox.

<sup>1</sup> The report as presented to the Executive Council of the Association on December 26, 1940, has been abridged for publication here. Copies of the full report may be secured for ten cents each from Kenneth Colegrove, Northwestern University, Evanston, Ill. The members of the committee were: Joseph P. Harris (chairman), Frank Bane, Rowland A. Egger, J. A. C. Grant, Pendleton Herring, W. A. Jump, Harold D. Smith, Elbert D. Thomas, and Leonard D. White.



purposefully to attune political science to the needs of modern society. We are not unmindful of the very great contribution which all social sciences may make, but we believe that the responsibility of the political scientist is especially great.

*Public Service Activities of Political Scientists.* In order to secure factual data as to the extent and character of the public service activities of political scientists at present and during the last five years, the committee requested the chairmen of political science departments at 137 universities and colleges to supply it with a brief account of such activities. Ninety-one replies were received, including replies from practically all of the larger institutions. Many departments in smaller universities and colleges, particularly those which combine political science with other subjects, failed to reply, and the replies received from the smaller institutions generally indicated few public service activities. Of the 91 departments replying, 52 listed considerable public service activities of one or more of their members, while 39—principally in smaller institutions—indicated relatively few relations with public officials or public activities of any type.

The information supplied in these replies is not sufficiently uniform to permit ready tabulation and statistical analysis. The following findings, based largely upon the replies received, supplemented by the first-hand knowledge and inquiry of the committee, may be ventured:

1. Many political science departments, including practically all of those in the large universities, are in close touch with public officials, frequently rendering advisory, consulting, research, and other services. A considerable number of political scientists are members of official boards, commissions, or committees, and a few hold elective or appointive public offices. Most of the replies received, however, indicate active participation in governmental services by only certain members of the department, and in most instances reported only those who were engaged in such activities. It is not feasible to present any satisfactory statistics on the number of political scientists actively participating in government and those who are not, but it seems probable that those so engaged are considerably in the minority.

2. A relatively small number of political scientists are unusually active in public service undertakings and have made contributions of the first order. Several of these hold high public positions, to which they have brought the results of their training and insight into governmental processes; others have been instrumental in important governmental developments, such as the city manager form of city government, reorganization of state and federal governments, the organization of the planning agencies, the extension and improvement of civil service, training for the public service, public budgeting, and governmental research organizations.

3. A considerable number of political scientists have engaged in a

limited amount of public service at one time or another, and have made distinct and valuable contributions. Most of these have engaged in special *ad hoc* tasks from time to time, usually involving research or consultation upon such problems as taxation, public finance, municipal charters, personnel administration, elections, etc. Others have been members of local governing bodies or of administrative boards or committees, or have served upon special investigating committees.

4. It would appear that there is a definite trend in the direction of greater participation by political scientists in public affairs. The number serving government at all levels in one capacity or another is much greater at present than even five years ago. The contacts which political scientists have with organizations of public officials and civic organizations concerned with governmental affairs, and the services which they render to such organizations, are likewise increasing.

5. A number of political science departments follow a definite policy of rendering service to local governmental agencies and engaging in research on state and local problems wherever the opportunity presents itself. These departments frequently have very close relations with the state leagues of municipal officials, state planning agencies, and civil service commissions within their areas. The attitude of these departments is well expressed by a letter to this committee from the chairman in a smaller state university which has carried on a notable program of public service and research, as follows: "We believe that it is one of the functions of educational institutions in a democracy, and particularly in the state-supported institution, to serve the officers and agencies of our state government to the best of our ability and to as great an extent as our capacity permits. With this idea predominant, the members of the staff have participated in community programs and undertakings whenever it was possible. We have also attempted to make it plain, whenever occasion permitted, both in the press and by personal announcement, that the university and the department stood ready to use its research facilities for the benefit of worthwhile community or state programs."

6. A number of universities have set up research organizations, frequently called bureaus of governmental research, to conduct research on governmental problems, and to facilitate making available the resources of the university to state and local officials. Most of these are located in state universities, as the list below indicates; but a number are located in privately supported institutions, and several are connected with municipal universities.

No attempt has been made by this committee to collect data and to study the operation of these bureaus, but their very existence indicates a desire on the part of political scientists to serve governments within their areas by the study of governmental problems. Several of these research

LIST OF UNIVERSITIES AND COLLEGES WITH GOVERNMENTAL RESEARCH ORGANIZATIONS (INCOMPLETE)

<i>State Universities</i>	<i>Municipal Universities</i>
Alabama	Cincinnati
California (Berkeley)	Wayne
California (Los Angeles)	
Indiana	<i>Privately Supported Institutions</i>
Kentucky	Bowdoin
Louisiana	Chicago
Maine	Harvard
Michigan	Pittsburgh
Minnesota	Princeton
Oregon	Temple
New Hampshire	
North Carolina	
Pennsylvania	
Pennsylvania State	
Texas	
Virginia	
Washington	

organizations are actively associated with state leagues of municipal officials, with the result that their research work is related closely to the problems confronting municipal governments. Others serve largely the needs of the state government or of the local government where they are located, and a few engage primarily in fundamental research on governmental problems. An examination of the titles of the publications and research projects of these bureaus indicates that they are usually concerned with practical problems rather than with fundamental research. Many have been largely instrumental in bringing about far-reaching improvements in governmental organization and administration. Although their activities may at times appear ineffectual, in the long run these research bureaus are an influential force and have a notable influence upon government within their areas.

The Bureau of Public Administration of the University of Virginia is worthy of special mention because it serves as a planning and clearing-house agency for the facilitation and promotion of research on governmental problems for all the institutions of higher learning in the state. It serves as the staff agency for the State Council of Public Administration, consisting of the governor, the presidents of two institutions of higher learning, the heads of the state league of cities and the state planning agency, and several leading state officials and private citizens. The Council considers broadly the research needs of the state and local governments,

and the Bureau attempts to find the persons best qualified to conduct needed research studies, and to aid in making the necessary arrangements for such studies. The results, which have been notable to date, will be watched with interest by other states.

7. It has been stated frequently that relatively few political scientists are utilized by government in a technical or specialist capacity. Relatively few political scientists have been called to Washington within recent years, particularly in comparison with the number who have been called from economics, law, business administration, statistics, and other professions. While many political scientists participate in state and local government, as their replies to this committee indicate, in many instances they participate as citizens rather than as technicians.

*General Observations.* The public service activities of political scientists and their relations with public officials, as reported to the committee, are impressive. It may be questioned, however, whether political scientists are sufficiently in touch with the phenomena which they study and teach. Too often they study government only through the use of books and the printed word, and thus cannot bring to their research or teaching the lively sense of reality and the grasp of the important issues which come only through first-hand contacts.

The value of effective relations between political scientists and public officials is increasingly recognized and substantial progress is being made, often in the face of serious difficulties. In many communities, public officials, for a variety of reasons, are not inclined to seek the aid of political scientists. Frequently they have little appreciation of the services which political scientists can render. In communities with low standards of public service—particularly those which are dominated by strong political machines—the services of the political scientist, as well as of scientists in other fields, are seldom sought or welcomed. Yet many political scientists have been able to overcome these difficulties and to work effectively with “practical politicians.” Too often political scientists have an erroneous opinion about the character of public officials, which would be dispelled by closer association. Those who regard public officials as generally political, incompetent and frequently corrupt would be enlightened by greater acquaintance.

Another and important difficulty which stands in the way of more effective relations between political scientists and public officials is the time required to maintain such relationships. While a reasonable amount of public service activities is of value to the political scientist in his teaching, it is easy for outside interests to absorb his energies to the neglect of his real job. Many political scientists wisely refuse to engage in less significant public service activities, which are often time-consuming and of little value to the student of government. The first obligation of the

teacher, of course, is his teaching, and public service activities have to be considered with reference to that fact. There are very real limitations upon how much outside activity political scientists may undertake during the academic year. Without exception, they welcome research assignments within their special interests which may be carried on during the summer period or while they are on leave of absence.

In many smaller institutions, and some larger ones, teaching loads and administrative duties are so heavy that they leave the instructor little time for outside activities or research, and a few institutions frown on public service activities because of excessive caution against involvement in politics. Yet even under these circumstances quite a number of political scientists are rendering significant public service, and, fortunately, many institutions are coming to recognize the importance of such public service activities. There ought to be greater recognition of the fact that the political scientist must devote a considerable amount of time to public service activities in order to be a good teacher, with a corresponding adjustment of his teaching and administrative duties. In many, if not most, institutions, little or no provision is made for clerical assistance to the political science instructor, such as would relieve him of routine tasks and give him greater time and freedom for outside activities. This situation has been relieved to some extent by the assistance of N.Y.A. students, but these usually are untrained and may be given only the simplest tasks.

One of the greatest handicaps to more effective participation by political scientists in public affairs has been the undue emphasis upon production of published articles and books. The route to advancement too often lies solely through publication, with the result that frequently publication is looked upon as an end in itself, and research is considered, not in terms of the advancement of knowledge or the solution of important governmental problems, but rather as an opportunity to turn out an article or a book. Some of the most significant researches in political science today are being published as public documents or reports without credit to the author, and some result, not in publication, but in a brief confidential report or memorandum to the responsible public official. Research of this character, as well as important public services not of a research character, should be recognized as of at least equal value to the usual type of publication.

It may be noted that the opportunities and values of relations with public officials do not apply alike to all political scientists. The student of international relations establishes contacts with the State Department and other divisions concerned with our foreign relations, as well as the foreign services of other countries, but would have perhaps little to gain by relationships with local officials. The political scientist specializing in public administration, legislation, or judicial administration has ample

opportunity to study his subject at first hand. The student of political theory or of public opinion and propaganda may feel that he has little to gain by close relations with public officials and through public service activities, but this position is hardly supported by the facts. Several political scientists specializing in political theory have made great contributions to government and thereby greatly enriched their own research and teaching. Political theory, after all, need not be studied in a vacuum, or exclusively by the use of the printed word. Every branch of political science has a contribution to make, and no political scientist should regard his field as one apart from actual government.

*Recommendations: A special committee should be set up to study and to make recommendations concerning university and college training in political science.* [This recommendation was adopted by the Executive Council at its meeting of December 26, 1940.] Such a committee should inquire whether the present training is well adapted to the needs of students (1) as a part of a liberal education, (2) for persons who plan to enter the public service, and (3) as training for research in governmental problems. The last comprehensive investigation by the American Political Science Association of the subject of college and university instruction in political science was conducted by the Haines committee authorized at the annual meeting of 1911 and reporting in subsequent years.<sup>2</sup> In consideration of the great changes which have taken place in government since 1911, the increase in the number of university graduates who are entering the public service, the increase in the number of students who are enrolled in political science courses, and the fact that a large number of them seek training which would be of value to them in the public service, your committee believes that the time is ripe for a comprehensive study of university and college training in political science.

2. *Political science departments should follow a deliberate policy of rendering public service to governments within their areas, and conducting research studies of significant local governmental problems.* Activities of this type, when kept within reasonable bounds, should not be regarded as in competition with the duties of teaching and writing, but as an essential part of the equipment of any teacher of political science, necessary for his teaching as well as his research.

3. *Political science departments should promote and encourage research studies involving field work, particularly comparative studies covering a number of governmental units.* Research upon current problems of interest to

<sup>2</sup> For the reports, see this REVIEW, Supplement, Vol. VIII, Feb., 1914, pp. 249-70; and Vol. IX, May, 1915, pp. 353-74. Professors William B. Munro and Earl Crecraft made a survey of certain aspects of the teaching of political science for the Committee on Policy in 1929, but this survey did not deal with the content of political science instruction.

public officials is essential to the establishment of closer relations between political scientists and such officials, and should constitute the basis upon which political science departments seek to relate their work more effectively to the governments within their area. Field work is of great importance in government research, and too often is neglected because the expenditures involved are beyond the means of the individual instructor. The value of field studies lies not only in the results secured, but also in the insight and understanding of governmental processes and in the contacts which they afford the investigator. Political scientists should be more energetic in seeking funds for research studies of this type.

4. *In making new appointments, political science departments should give consideration not only to the scholarship and teaching qualifications of candidates under consideration, but also to their interest and aptitude for contacts with government officials.* In the past, perhaps too great a premium has been placed upon scholarship, with the result that frequently the unusually studious but retiring individual has been favored over the less studious person with greater aptitude for public contacts.

5. *In making promotions, political science departments should take into account the research and public service activities of members of their staffs.* At present, publication is frequently the most important consideration in awarding promotions. Similar recognition should be accorded to research and to outstanding administrative experience in governmental agencies. In several fields, political scientists might well be expected normally to have had at least a year's experience in a research or administrative capacity within a governmental agency as a condition of promotion. It would also be desirable for political science departments to urge and even to insist that the candidate for the doctorate have had a year of actual governmental or research experience before receiving the degree. This requirement would constitute a valuable part of the training for the doctorate, and is perhaps of greater importance for the future teacher than for students who plan to enter the public service.

6. *Political science departments should seek in the following and other ways to establish effective and coöperative relations with public officials:* (a) Public officials should be invited to the university campus for institutes, conferences, and to serve as special lecturers, consultants, advisers, and in other capacities. Within recent years, Harvard University has made extensive use of public officials as non-resident consultants, each participating for a brief time in graduate seminars conducted in the Graduate School of Public Administration. The conferences which were held on university campuses several years ago under a special grant to the American Political Science Association were of great value because they brought together political scientists and men in public life to discuss public questions of current importance. A number of these universities have continued to

hold such conferences regularly from year to year, with excellent results. Experience indicates that public officials are glad to accept invitations to visit the university campus, and conferences of this kind can be conducted with little or no financial assistance. Institutes and short courses for public officials and public employees are also a means of establishing desirable contacts and relations, as well as being an important means of serving the government of the area. A number of universities conduct such institutes, notably the University of Southern California, which had over 3,000 public officials and employees enrolled in the 1940 session.

(b) Political scientists should attend important meetings and conventions of public officials wherever possible, particularly of such associations as state leagues of cities, conferences of civil service officials, planning officials, and similar groups. More universities should recognize the value of such contacts and provide for the relatively small traveling expenses involved, particularly for junior staff members.

(c) Political scientists should make greater effort to become acquainted with public officials in the community, including field and regional officers of the federal government. The opportunity and value of such associations unfortunately are usually overlooked. In several large urban centers, informal associations of public officials and university faculty members—political scientists and others—have been formed within recent years to bring about greater acquaintance and interchange of ideas. In Los Angeles such a group was formed about ten years ago under the title of "Government Administration Group," and it meets monthly for dinner and an evening of discussion. It has proved so popular that a second chapter has had to be formed. Undoubtedly these associations have aided in the establishment of the unusually close relations between political scientists and public officials in the Los Angeles area. A similar group has been formed recently at Berkeley, California, and probably others exist elsewhere. There are several groups of this type in Washington, D.C., and with the formation of local chapters of the American Society for Public Administration, similar opportunities will be provided in other communities.

Political science departments should make a special point of aiding new members to become acquainted with officials in the community, and to pave the way for them to be called upon to make significant studies of local governmental problems. Without such assistance, the young instructor who is in the period of life which should be most productive of research because of the absence of administrative duties and other time-consuming responsibilities, is apt to find little outlet for his research abilities.

*7. It is recommended that the American Political Science Association meet regularly in annual convention with the American Society for Public Administration. Joint meetings will afford opportunities for greater acquaint-*



ance between officials and political scientists and permit the interchange of ideas and joint discussion of problems. In local or regional meetings of political scientists, it would be highly desirable to invite public officials to attend, and occasionally to hold joint sessions with the local branch of the Society for Public Administration, where such exists, or other organizations composed largely of persons in the public service.

8. *The most effective use of political scientists, as well as other social scientists, requires a research organization constantly securing information about governmental problems and research needs, and matching these needs with university resources.* A research organization is useful for the discovery of research needs, to plan and program the research, to secure necessary approval or "clearance" of research projects, and finally to publish and follow up after the completion of the project. Many of the difficulties and mistakes which attend and frequently defeat research endeavors are avoided by the guidance and assistance of an agency of this kind. This function is being carried out at present to a greater or lesser extent in a number of states. In many universities, research bureaus or committees perform this function, but too often serve only the institutions with which they are connected. In most instances, government research bureaus within the universities confine their activities to the research and service performed by their own staff members, and do not adequately meet the need for a central agency for planning and stimulating research, and marshaling the research facilities of the university for the services of the state.

9. *Political scientists should make themselves available for research and consultation assignments.* It is desirable for political scientists to take appropriate civil service examinations when they are offered in order to be available for temporary research undertakings, for frequently governmental departments are unable to utilize their services unless they can be appointed from a civil service register. Political scientists are urged to have their names listed on the personnel service maintained by the Public Administration Clearing House at Chicago, which is widely used for research and administrative positions by governmental and other public bodies throughout the country. Relatively few political scientists are making use of this service. A special register of political scientists is being prepared by the United States Civil Service Commission for use by the federal government.

10. *Political science departments could with profit establish closer relations with other departments in the university or college.* Schools of business administration, law, agriculture, engineering, forestry, public health, education, social service administration, and other departments or schools which train for the public service often enjoy close relations with public officials. These departments have something to contribute to the study

of government, and in turn might make greater use of the services of political scientists.

*Conclusion.* There has been great progress in the development of effective relations between public officials and political scientists during the last quarter of a century, and we confidently expect even greater progress in the future. More and more, the political scientist is called upon by government for technical and professional assistance, for important services upon official boards and agencies, for research upon the problems confronting government, and for other significant services. In an increasing number of cases, political scientists have been in the vanguard of important governmental reforms. Political science departments should recognize their obligation to serve the state, and adopt a definite policy of facilitating and encouraging their staff members to engage in research and other public service activities for which they have a special competence.

JOSEPH P. HARRIS, *et al.*

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

Committees of the American Political Science Association thus far appointed for the year 1941 include the following:

1. *Committee on Program for the 37th Annual Meeting*: Francis G. Wilson (chairman), Earl DeLong, W. Brooke Graves, Harold H. Sprout, O. Douglas Weeks.
2. *Committee on Local Arrangements*: Phillips Bradley (chairman); numerous representatives of educational institutions in New York City.
3. *Committee to Nominate Officers for 1942*: Robert R. Wilson (chairman), Charles G. Haines, Roscoe C. Martin, Roger H. Wells, Harold Zink.
4. *Committee to Consider Revision of the Constitution and By-laws of the Association*: Robert E. Cushman (chairman), Walter F. Dodd, John A. Fairlie, William O. Farber, J. A. C. Grant, H. C. Nixon.
5. *Committee on Electoral Procedure of the Association*: Francis W. Coker (chairman), Edward S. Corwin, J. R. Hayden, Roscoe C. Martin, R. G. McKelvey, Louise Overacker, Robert R. Wilson.
6. *Committee on Relations with Local and Regional Societies*: Harvey Walker (chairman), D. F. Fleming, W. Brooke Graves, T. V. Kalijarvi, Schuyler C. Wallace, Herbert Wright, Francis G. Wilson.
7. *Committee on Endowment* (same as last year, with addition of Joseph P. Chamberlain. William Anderson, chairman).
8. *Committee on the Personnel Service* (same as last year. Harvey Walker, chairman).
9. *Committee on Publication of Proceedings* (same as last year. W. Brooke Graves, chairman).
10. *Committee on Public Law*: Oliver P. Field (chairman), Marshall E. Dimock, Charles G. Haines, James Hart, Charles S. Hyneman.
11. *Committee on Legislation and Legislative Methods, with Special Reference to Congress*: George B. Galloway (chairman), Marshall E. Dimock, Meyer Jacobstein, Benjamin B. Wallace, Schuyler C. Wallace.
12. *Committee on the Publication of Election Statistics*: W. Reed West (chairman), Thomas S. Barclay, Harold G. Gosnell, E. E. Schattschneider, Catheryn Seckler-Hudson.
13. *Committee on the Social Studies*: Phillips Bradley (chairman), Roscoe L. Ashley, Russell M. Cooper, Robert H. Connery, Henrietta Fernitz, O. Garfield Jones, David W. Knepper, Lane W. Lancaster, Ralph E. Page, Harrison C. Thomas, Howard White.

Reprints of Professor Robert E. Cushman's article in this issue of the REVIEW may be obtained at thirty cents each by applying to Professor Kenneth Colegrove, Northwestern University, Evanston, Ill.

The University of Chicago announces the appointment of Dr. Philip W. Ireland, now instructor in government at Harvard University, as assistant professor of political science. Dr. Ireland will give courses in the field of international law and relations.

On February 12-14, Mr. C. J. Hambro, president of the Norwegian Storting, delivered a series of three lectures on the University of Illinois campus under the auspices of the department of political science. The subjects were: "Why Neutrality Failed," "The Status of Norway Today," and "International Cooperation and the Future."

Professor Leonard D. White, of the University of Chicago, is chairman of a newly appointed committee on the history of American administrative institutions, established under the sponsorship of the Public Administration Committee of the Social Science Research Council.

Dean Isidor Loeb retired from his post at Washington University last July and has since become director of the Wohl Foundation, established by a St. Louis business man for charitable and educational purposes.

Professor Charles C. Rohlfsing, of the University of Pennsylvania, is a member of a committee of five citizens appointed by the governor of Pennsylvania to investigate the Philadelphia Registration Commission. The committee has designated Dr. John P. Horlacher, assistant professor of public administration at the University, as director of its staff of investigators, with an analysis of the city's permanent registration system as one of his principal tasks.

Since the death of Professor Robert C. Brooks, Professor J. Roland Pennock has been acting head of the department of political science at Swarthmore College, and Professor Brooks' courses have been in charge of Professor Pennock, Mrs. Frances Reinhold Fussell, Professor R. H. Wells of Bryn Mawr College, and Professor Bradford West of the University of Pennsylvania.

Professor Ralston Hayden, of the University of Michigan, will exchange with Professor Charles E. Martin, of the University of Washington, for the summer quarter of 1941. Professor Hayden will conduct a special seminar at Seattle on the United States and the Philippines.

Professor William B. Munro has been appointed to the newly-established Edward S. Harkness professorship of history and government at the California Institute of Technology. He was also recently elected a member of the Board of Overseers of Harvard University, and is chairman of the Overseers' committee on the Graduate School of Public Administration at that institution.

On the basis of a project for a history of American political parties as shaped by social forces (especially interest groups), Dr. W. E. Binkley, professor of political science at Ohio Northern University, has been awarded the Alfred A. Knopf fellowship in history for 1941, carrying a stipend of \$1,200.

The second series of lectures presented under the auspices of the Claremont Colleges embraced three addresses, January 23-29, by Professor Edward S. Corwin, of Princeton University, on the general subject, "Constitutional Revolution, Limited." The titles of the individual lectures were: "Judicial Interpretation of the Constitution," "The New Deal and the Supreme Court," and "Changing Concepts." The lectures will shortly be published in book form.

While on sabbatical leave from Amherst College during the second semester, Professor Karl Loewenstein is visiting Brazil, Argentina, and other South American countries.

Professor Schuyler Wallace, of Columbia University, will teach in the coming summer session of the Utah State Agricultural College.

While on leave from Bowdoin College, Professor Orren C. Hormell is employed in Washington as a consultant to the National Resources Planning Board, with special attention to enabling acts and ordinances for emergency defense areas.

At the University of Michigan, Dr. Harlow J. Heneman has been advanced to an associate professorship.

Professor Matthew C. Mitchell, chairman of the department of political science and sociology at Brown University, is on sabbatical leave during the current semester, and Professor Leland M. Goodrich is serving in his stead.

Dr. Edward H. Litchfield, of Brown University, has accepted a position as assistant director of employment and training in the executive department of the Panama Canal Zone. His work at Brown has been taken over for the second semester by Mr. Guy Howard Dodge, of Harvard University.

Professor Charles S. Hyneman, of Louisiana State University, served recently as chairman of a committee appointed by the newly created Louisiana state civil service commission to conduct an examination for the position of director of personnel.

Dr. Pierre Cot, formerly professor of law at the University of Rennes and minister of air in French cabinets in 1933-34 and 1936-38, has been appointed visiting lecturer in the department of government at Yale University for the second term of the current academic year.

Professor Graham H. Stuart, of Stanford University, is one of a group of ten editors and scholars sent by the Carnegie Endowment for International Peace to South America in March and April. The purpose of the

visit has been to enable these men to increase their knowledge of Latin America, to exchange information and opinions with colleagues there, and to bring back to the United States the impressions gained, with a view to advancing good will between the Americas.

Mr. Walter L. Riley, recently of the University of Washington, has accepted a teaching post at Whitman College beginning in February of this year.

Dr. Harry Johnstone, who received his degree in political science last summer at the University of Washington, has been appointed training consultant to the director of personnel in the War Department at Washington.

Mr. Richard Van Wagenen, of Stanford University, has been appointed instructor at Yale University for the year 1941-42.

Dr. O. Glenn Stahl has resigned from the Tennessee Valley Authority to accept a position as assistant chief of classification in the Federal Security Agency.

Professor Egbert S. Wengert, of Wayne University, has accepted appointment to the Carter Glass chair of government at Sweet Briar College and will have the initial rank of associate professor.

Professor S. D. Myres, Jr., will return in May to his post at the Southern Methodist University after a three-months' trip to South America.

Dr. David M. French, formerly of the University of Michigan and at one time a Rhodes Scholar, is now teaching in the department of history and political science at Mills College.

Dr. John Brown Mason, associate professor of social science, Fresno State College, Fresno, California, has been appointed director of the California Adult Education Workshop to be held at Mills College, June 22 to July 13. The theme will be "Adult Education and National Defense," and there will be close coöperation with the Institute of International Relations to be held on the Mills campus during the first ten days of the Workshop period. In addition to acting as director, Dr. Mason will offer work on "Adult Education in International Relations."

Professor Alpheus T. Mason, of Princeton University, is preparing the authorized biography of Mr. Justice Louis D. Brandeis and desires to solicit letters, personal reminiscences, anecdotes, photographs, and other pertinent materials. Inasmuch as after 1915 practically all of Justice Brandeis' letters were written in long-hand, copies in the hands of recipients are the only ones available. All materials furnished Professor Mason

will be returned if desired, and full credit will be given in the completed biography.

President Edward A. Fitzpatrick, of Mount Mary College, Milwaukee, is writing a biography of Dr. Charles McCarthy, organizer and for many years director of the Wisconsin Legislative Reference Bureau. He would appreciate receiving letters and other sorts of materials relevant to Dr. McCarthy and his activities.

George Washington University has established a special graduate curriculum leading to the degree of master of arts in public personnel administration, and plans are being formulated for such a curriculum leading to the doctor's degree. The matter is in charge of a university committee, headed by Dr. Mitchell Dreese, dean of summer sessions, and advised by an outside committee of personnel experts.

A new monthly publication of interest to political scientists in the field of municipal government and administration is the *Boletín de la Comisión Panamericana de Cooperación Intermunicipal*, launched under the editorship of Dr. Carlos M. Moran and published in Havana.

During the winter quarter at the University of Chicago, four lectures were given by graduate students in the political science department as a part of the work of the Social Science Division. The lecturers and their subjects were: Charles Bream, "The Arms Trade"; Klaus Knorr, "British Colonial Policy"; Robert Lochner, "Geopolitik"; and M. Harvey Sherman, "The American Governor."

The third annual meeting of the Mid-Western Political Science Conference will be held at Potawatomi Inn, Pokagon State Park, Indiana, May 16-18. The committee on program consists of Professors Francis R. Aumann, Ohio State University, chairman; Amry Vandenbosch, University of Kentucky; Llewellyn Pfankuchen, University of Wisconsin; and Arnold J. Lien, Washington University. Professor Francis G. Wilson, University of Illinois, is chairman of the conference, and Professor Harold Zink, DePauw University, secretary-treasurer.

An Institute on Inter-American Relations and the Mid-West was held at the University of Kansas City, January 10-12. Representatives of the U. S. Department of Commerce, the Department of Agriculture, and nine Mid-Western colleges and universities participated. Dr. Hans Morgenthau, assistant professor of law and political science, Dr. Lynn I. Perrigo, assistant professor of history, and Dr. Bruce Trimble, head of the history department, were active in organizing the Institute, and Mr. Clarence Senior, lecturer on contemporary Mexican civilization, served as director.

A recent three-session conference at Louisiana State University on "Organizing Louisiana for Democratic Government" was closed with an address by former Congressman T. V. Smith of Illinois. During March 17-19, Dr. Paul van Zeeland, former prime minister of Belgium, delivered a lecture on the current European situation and conducted a conference on European affairs. The lectures on the Edward Douglas White Foundation were delivered in April by President Robert M. Hutchins, of the University of Chicago.

On January 31-February 1, 1941, a Southwide Conference on the National Defense Program and State Finance met at the University of Alabama. Sponsored jointly by the University's Bureau of Public Administration, the State Department of Revenue, and the Federation of Tax Administrators, the Conference drew some fifty attendants, including key state finance officers, prominent citizens, and university officials from eight of the Southern states.

The fifth semi-annual meeting of the Metropolitan Political Science Association was held at Hunter College on March 7, with fifty-five members and guests attending. Dr. George Gallup, director of the American Institute of Public Opinion, and Dr. Henry Durant, director of the British Institute of Public Opinion, addressed the meeting on the procedures and problems of public opinion polls. Professor George Graham, of Princeton University, was elected chairman for the academic year 1941-42, succeeding Professor Phillips Bradley, of Queens College.

The Summer Institute for Social Progress customarily held at Wellesley College will extend this year from July 5 to 19, and will have as its theme "Strengthening America at Home and Abroad." Round tables will be featured, and Mr. Mordecai Ezekiel, economic adviser to the U. S. Department of Agriculture, will head a list of leaders including several distinguished teachers of political science and economics. Further information may be had from G. L. Osgood, secretary, 14 West Elm Ave., Wallaston, Mass.

A Committee on Research in the History of American Administrative Institutions, created by the Committee on Public Administration of the Social Science Research Council, held its first meeting in Washington on March 1-2, and initiated a program for stimulating and promoting studies in its field. Members of the committee are Leonard D. White (chairman), University of Chicago; John M. Gaus, University of Wisconsin; Julius Goebel, Jr., Columbia University Law School; James Hart, University of Virginia; Lloyd M. Short, University of Minnesota; Roy Nichols, University of Pennsylvania; and Solon J. Buck, The National Archives.



**Robert C. Brooks, 1874-1941.** In the hearts of most men there is some "Mr. Chips" whose image is cherished throughout life. The universal tenderness of the professor for his students becomes in the course of events their universal tenderness for him. So it is that the passing of Dr. Robert C. Brooks is "Goodbye, Mr. Chips" to an infinite host of men and women who will treasure his faith and sustained interest in those recurring significant moments which renew one's inspiration. Whatever immortality is secured to us must be of this kind, and the greatness of an individual is surely measured by the number of spiritual lamps which he lights in the lives of his fellow-beings. Only one who has shared Dr. Brooks' office for nine delightful years knows the true greatness of this beloved teacher and knows how futile it is to try to impart it through the formality of words.

"To leave life before one knows it—that is the real tragedy. It makes the old seem like misers, hoarding stuff infinitely more precious than gold." No word of mine, or indeed of anyone, can better indicate Dr. Brooks' love of life than the foregoing marginal note written in his own distinctive hand on a memorandum concerning the sudden death of one of his students. The buoyant way in which he used to swing across the campus, the might of his pen, the humor of his mind, the joy in his voice, the sympathy in his heart, were the evidences of a *sui generis* vitality which left its challenge on more individuals than most of us are ever privileged to know. The thing which he gave to others above all else was an attitude of mind. There was no student too humble for his personal attention—no person too lowly for his praise—no cause too insignificant for his consideration. The wry urbanity with which we were all familiar, characterized by such a remark as "Congratulations on your full professorship—some are fuller than others," gave a zest to the commonplace, a sparkle to a compliment, a tang to a friendly jibe.

In his career as a political scientist, I happen to know that he cherished most the presidency of the American Political Science Association and an honorary degree from the University of Berne. I cannot forget the tears in his eyes when a Swiss professor said on the latter occasion, "You know that we Swiss think of Lord Bryce and you as our two greatest friends." He was grateful for those honors—and truly humble in their contemplation.

Robert Clarkson Brooks was born in Piqua, Ohio, February 7, 1874. Despite the fact, however, that he was a native of Ohio, he always preferred to think of himself as indigenous to the soil of the Hoosiers. He was graduated from Indiana University in 1896 and went thence to Cornell for graduate work, being there later awarded the President White travelling fellowship, which took him to the universities of Halle and Berlin. Many a subsequent college lecture was lightened and brightened by reference to those German university days, which were so rich in experience

to the men of his generation who were privileged to have them. When he returned from abroad, he served as an instructor at Cornell from 1899 to 1904, after which he held the Joseph Wharton professorship of economics at Swarthmore College from 1904 to 1908. The University of Cincinnati called him to a full professorship in political science in 1908, but in 1912 he returned to Swarthmore, never again to leave it except for occasional summer school courses elsewhere. In the United States, he is best known for his classic text, *Political Parties and Electoral Problems*. Abroad, he is best known for his *Government and Politics of Switzerland*.

Apart from the man as teacher, writer, friend, there are special causes which he championed that are the better for his contribution. We shall long remember his devotion to liberalism, his faith in democracy, his support of the Democratic party, his pride in little Switzerland, his courage in denouncing dictatorships, his passionate belief in the moral dignity of mankind. There is no adequate tribute for a man of his stature. These few simple words record all too impersonally and coldly a warm and vital grandeur that was Robert Clarkson Brooks.—FRANCES REINHOLD FUSSELL.

## BOOK REVIEWS AND NOTICES

*The Dynamics of War and Revolution.* BY LAWRENCE DENNIS. (New York: Weekly Foreign Letter. 1940. Pp. xxxi, 259. \$3.00.)

Lawrence Dennis is a brilliant writer and a master in the coining of sharply ironical formulas. His work should impress even those who realize to what extent it is indebted to the ideas of Oswald Spengler. Spengler's influence can be observed in Dennis' antithesis between money and blood, his characterization of socialism—he rejects utopian socialism and accepts a national socialism based upon discipline and heroism—and particularly in his belief in the necessary, fatalistic development of history and human society. Dennis could have concluded his work with the same quotation which Spengler uses as the last sentence of his *Decline of the West: Ducunt fata volentem, nolentem trahunt*. The fundamental thesis of Dennis' book is the radical negation of democracy, if one understands by democracy a régime based upon individual liberties and upon the toleration of minorities. ("Democracy . . . may be identified by the phrases parliamentary government, liberalism, a government of checks and balances—all of these terms meaning, among other things, a governmental system in which the rights of minorities to oppose the majority in certain approved ways is respected," p. xix.) The author indentifies democracy with a régime based upon the masses, and it is for him self-evident that the masses are incompetent and irrational. They do not know the real meaning of their wishes and demands. Therefore, every régime dependent upon them is unstable and weak.

This fundamental view is connected with an interpretation of present and modern history which, as Dennis repeats again and again, is opposed to predominant opinion. Democracy and Capitalism appear as necessarily connected. Capitalism is the expression of a particular historical period, a result of certain temporary causes (frontier, population increase, belief in unlimited progress, at least as long as the system works, but which breaks down today). Capitalism is linked with the British Empire, whose power is based upon the exploitation of monopolies under the cover of moral slogans and allegedly universal economic principles like free trade. Capitalistic democracy is today doomed. The élite, who brought it into being, is today stagnant and reactionary, and no longer dynamic. Therefore it is unable to ensure order and public welfare, as the existence of mass unemployment demonstrates.

Where are we going today? According to Dennis, the historical development of our time will necessarily result in a national socialistic order. Not profit, but power, will be of decisive importance. The whole earth will be dominated by empires based upon national socialism. Dennis believes that there is greater chance of a survival of the French Empire than of

the continuance of the British Empire (his book was written before the collapse of the Third Republic). Pyramid-building will be characteristic of the New Order—the organization of public works, meaningless from the point of view of individual profit, but securing work for everybody and expressing the unity and activity of the community.

The war of today is, in the eyes of Dennis, a nonsensical one. The Democracies proved their incapacity after the war of 1914–18. They did not prevent Germany's rise. Dennis believes further that the incompetent élite ruling the United States will provoke her participation in the fight between the "Haves" and the "Have nots." He announces that he will do everything to help the United States to win this war if it comes: "I shall be delighted to serve my country with its war propaganda. I am just as ready to lie as to kill for my country. Any ethic which does not put a man's country above all else is a stench in my nostrils" (p. xiv). But he knows that any attempt to rescue the doomed British Empire will not prevent, but only accelerate, the fatal, national revolution.

Who will dominate the United States of the future? Dennis castigates in the most vehement words the incapacity of the business men, but gives very few positive hints as to the composition of the new élite. He mentions that only Americans of Protestant descent and English stock can carry out the necessary change, and he states that the unity of the American nation was disturbed by Russian and South European immigration. Dennis does not believe that an agreeable future is around the corner. Wars will always be necessary to make sacrifices and heroism the characteristic virtues.

Some critical remarks may well conclude this analysis. Dennis addresses his book to the élite, believing that the masses are dominated by emotions and are unable to understand cool, unimpassioned thinking. But his book is built around over-simplified slogans. The correspondence of this system of slogans to reality is stated, but not proved, by its opposition to beliefs and opinions, which are today regarded as self-evident. The Anglo-Saxon democracies cannot be simply characterized as systems of ideologies covering economic exploitation and the rule of money. Law is not only the expression of force. The term power is used by Dennis in so broad a sense that it works as a universal key explaining everything and making cautious investigation unnecessary. It is also an over-simplification if Dennis characterizes the English policy toward Germany as based upon the belief that Germany is inferior and has to be always held in submission.

The dominant trend in Dennis' book is the violent dislike of pseudo-moralism and utopianism. But one cannot fail to note that Dennis' opinions are imposed upon him by his enemies. He simply expresses the opposite views, which, of course, cannot replace cool and truly realistic

analysis. One can himself be unrealistic, excited, and emotional even if one accuses his opponent of being unrealistic, excited, and emotional.

WALDEMAR GURIAN.

*University of Notre Dame.*

*The Clash of Political Ideals.* BY ALBERT R. CHANDLER (New York: Appleton-Century Company. 1940. Pp. xvii, 273. \$2.00).

*Where Stands Democracy?* BY MEMBERS OF THE FABIAN SOCIETY (London: Macmillan and Company. 1940. Pp. viii, 152. 3s. 6d.).

Both of these volumes belong to the vast mass of present-day published material dealing with the conflicting political ideas in our troubled world. The first is a source-book of quotations, ranging from Thucydides to John Dewey, on democracy, communism, and the totalitarian state. The second is a series of essays, based on lectures delivered under the auspices of the Fabian Society, and dealing primarily with the situation in England, especially its war aims and its war-time organization, and with the rival economic and political doctrines striving for supremacy in Europe.

Professor Chandler states that he intends his book to be objective and impartial, allowing the leaders of conflicting movements to speak for themselves. The question of selection, of apportionment of space, and of editorial comment is, therefore, of prime importance. Over half the volume is given to statements of democratic ideals, including well-chosen extracts from Milton, Locke, Jefferson, *The Federalist*, Washington, Mill, Lincoln, Walt Whitman, and Herbert Hoover. Communist theory is given fifty pages and includes the Communist Manifesto, selections from the writings of Lenin and Stalin, and a part of the constitution of the U.S.S.R. The theory of Italian Fascism is presented through part of Mussolini's article in the *Enciclopedia Italiana*. Nazi theory is inadequately stated in a very brief paraphrase of a few pages from Hitler's *Mein Kampf*, with special emphasis on his doctrine of Aryan racial supremacy. A brief chapter on "The Spirit of Japan" and the encyclical of Pope Pius XI on "Reconstruction of the Social Order" conclude the volume.

To this method of evaluating contemporary political ideas and problems there is one serious objection. Political systems can be judged more fairly and accurately by their actual operation than by the statement of ideals made by their founders, since no system ever works exactly as hoped or expected. Communist ideals on paper are very different from communism in Russia; and democracy today is by no means what Jefferson hoped it might be, either in its structure or in the scope of its activities.

In the Fabian Society essays, H. J. Laski writes on "Government in War-time"; Hamilton Fyfe, on "New Powers of Propaganda and Repression"; Leonard Barnes, on "The Uprising of Colonial Peoples"; R. H. S.

Crossman, on "National and Democratic Socialism"; G. D. H. Cole, on "The Decline of Capitalism"; and K. Zilliacus, on "War and Preparations for Peace."

This volume makes no pretense at objective impartiality, but is a frank statement of the authors' belief in socialism and an attempt to plead its cause. Its general point of view is that in the present world there are four contestants for supremacy: fascism, communism, capitalistic democracy, and democratic socialism. The authors wish to combine the economic theory of communism with the political methods of democracy, and are much concerned with the preservation of civil liberties. Just how a system of state socialism can be politically operated so as to remain democratic and free is not made clear. The authors seem to be more interested in economic doctrines than in political realities, and more concerned over international socialism and the British labor movement than over the fate of England and the Empire.

RAYMOND G. GETTELL.

*University of California.*

*The Old Deal and the New.* BY CHARLES A. BEARD AND GEORGE H. E. SMITH. (New York: The Macmillan Company. 1940. Pp. 294. \$2.00.)

This little volume is the fourth by the same authors in a series dealing with the government and politics of the United States during the Franklin D. Roosevelt administration. The first, bearing the almost exultant title of *The Future Comes*, was a review of the eight months following March 4, 1933; the latest one covers the entire eight years. After a volume proclaiming the arrival of the future, the reader might expect the final one to turn its attention chiefly to an examination of the brand-new social order for which the country had so long been in labor. And this is what has been done, although the authors make it plain that the new order in 1940 appears to have little claim to finality.

The body of the volume is taken up with a summary of the policies and acts of the present Administration, accompanied by an appraisal of the chief ones; all of which is preceded by two chapters summarizing and characterizing the economic and political régime upon which the curtain was rung down on March, 4, 1933. For purposes of exposition and discussion, the material is divided into five classes: finance and investment, business and industry, agriculture, relief and unemployment, and foreign policy. In each division, the chief elements of the problem are stated, the remedial statutes outlined, and the results of their administration analyzed and appraised. Any scholar who has labored with the complex statutes and administrative practices adopted by the federal government during the past eight years must be impressed with the skill and clarity with which their basic facts have been marshalled and the causal relationships set

forth in the small compass of this volume. Important omissions there are, of course, as for instance a unified examination of the question of public finance; and the conclusions, while maintaining a high tone of objectivity, grow normally out of the basic assumptions found in the well-known writings of the senior member of the firm.

The authors well summarize the trends in America since 1875 which culminated in the "revolution" of 1933. "Merciless and driving are the forces of mechanics and economics under the propulsion of blind greed and passionate purpose; the less they are understood the more devastating to civilization are the consequences, the more difficult it will be to bring them under the control of the state, the community, humanity" (p. 44). As to the period before 1933, only by falsification and distortion could it be reduced "to an 'order' or 'system' which was subject to merely a temporary disarrangement and could be 'recovered' or 'restored' by measures of legislation. . . ." The essence of the New Deal, therefore, at least in its earlier phases, was state action to establish a social order in closer conformity with the technological and economic facts of the day.

The N.R.A. was an opportunity for American business leaders "to come abreast of the powerful forces that were rapidly changing the world about them;" but after its failure, the President and his entourage never again proposed a "coöperative, concerted plan for industrial order and progress." Thereafter, their approach was a confusing mixture of "appeasement, cajolery, pleading, trading, exhortation, and coercion;" which measures, one gathers, are not well-adapted to the building of a sound "future." Much good legislation in detached sectors followed, but the only scheme of a comprehensive nature for sustaining the American fabric was the spending program. Particularly, the gigantic spending program for national defense offered "a possible escape from all problems" (p. 173).

Some of the conclusions reached by the authors are not of an optimistic nature. Many of the automatic checks on the federal government have disappeared; a new and great political machine of government employees, relievers, and contractors has come into being; and foreign policy has moved from one of American continentalism to a new type of "isolation" in which the United States has no support except from Great Britain. The growing debt and costs of government point to a "serious explosion" unless there is a great jump in the production of consumers' goods, for the attainment of which the New Deal has "no machinery or policy." More serious than all is noted a profound change in national character revealed by the "easy, almost abject, acceptance" of the views lately handed out by the Administration on foreign affairs.

All in all, the reader is left with the feeling that America is again adrift, as before 1933, without adequate plans or charted course. Perhaps the

situation is not so serious as it may appear. The isolated pieces of reform instituted by the Roosevelt Administration may be parts of a figure whose design no eye has yet seen. That there is more than a little futility in attempting to make over society "with a little black liquid," as de Maistre asserted, is doubtless true; but can anyone doubt that social planning through government will not be more often tried, and with a greater prospect of success, in the future than in the past? After all, the nation started out with a "design for living," the Constitution of 1787; and it was Alexander Hamilton who pointed out that to Americans had been reserved the first opportunity to demonstrate that good government can be established by "reflection and choice," rather than by being left to "accident and force."

EARL L. SHOUP.

*Western Reserve University.*

*The Legislative Way of Life.* BY T. V. SMITH. (Chicago: University of Chicago Press. Pp. 101. \$1.50).

This volume, comprising lectures originally given at Westminster College, emerges as a timely book. Even in periods less catastrophic, American legislative assemblies have not been subjected sufficiently to scholarly and scientific investigations. However, at a time when totalitarian governments thumb their noses at legislatures, and at a time when unprecedented crises in the few remaining democracies result in enormous delegation of powers to the executive, it is well that a student of the American way should remind us that from understanding and not disdain of our representatives "will flow whatever improvement is possible for the legislative core of the democratic state."

To Professor Smith, tolerance and extension of skill and ability to meet people half-way are the elemental ingredients of the legislative way of life, recognizing always that it is built upon inescapable conflict. "The beginning of collective wisdom is for each man to discover that he is not God. To discover that is to see why legislatures are necessary and to learn how they can be fruitful."

In a setting of eloquence and wit, our philosopher-politician, drawing heavily upon his own rich practical experience, reviews the personnel of the forty-nine legislative assemblies. The reviewer agrees with the author that there are too few women in our legislative assemblies (less than 150 at any one time among 7,500 state legislators, eight among 531 in the 1940 session of Congress), and that as a group, women legislators are both less power-hungry and less money-mad than are men. However, if Professor Smith is at all serious when he says that "there ought to be as many women as men . . . if the principle that agreement across conflict lines cannot be adequate or just without actual representation of all major



diversity," then he is carrying the principle of equality of representation to an absurd length.

Professor Smith, as a practicing politician who fathered the legislative council in his own state of Illinois, does well to stress the importance of this scientific device in attracting better legislative personnel; "for, by thus having the facts when they are needed where they are needed, the legislative way of life corrects its own shortcomings and presents a more united front than ever before to totalitarian pretenses of superiority."

In the third and last chapter, the author considers the direct and indirect products of our legislatures. To the direct products, as seen in the thousands of laws passed annually, he adds his appraisal of such indirect products as outer peace, inner freedom, and institutional beauty. The latter is "as old as Plato and as conservative as the democratic process of accommodation." To the poet-author, institutional beauty represents that final fruit of the legislative way of life which can breed at one end an enthusiasm for the rough-and-tumble of machine politics and at the other the subtlety of Lincoln's harmony of ancient discrepancies in democratic theory—crowned by the good sportsmanship produced by our system.

Professor Smith, in this volume, has made an eloquent defense of compromise as characteristic of the legislative way of life. He concludes: "True, when seen from the shining cliffs of perfection, the legislative process of compromise appears shoddy indeed. But when seen from some concentration camp of the only alternative way of life, the compromises of legislation appear but another name for what we call civilization and even revere as Christian forbearance."

BELLE ZELLER.

*Brooklyn College.*

*The Changing American Legal System; Some Selected Phases.* BY FRANCIS R. AUMANN. (Columbus: Ohio State University Press. 1940. Pp. x, 289).

Professor Aumann traces the development of the American legal system from its beginnings through 1935. He confesses that the study does not attempt to "explore all of the materials in areas with which it is concerned." Nevertheless, one is impressed with the wealth of material analyzed and the excellent documentation of the subject-matter.

The book is divided into four parts as follows: Part I (three chapters), "The Period of Colonial Beginnings, 1608-1776"; Part II (five chapters), "The Formative Period of American Law, 1776-1865"; Part III (one chapter), "Some Problems of Growth and Development during the Period of Maturity of American Law, 1865-1900"; Part IV (one chapter), "Some Problems of Growth and Development in the Present American Legal System, 1900-1935."

Progress in the law and legal system has been attained only after a

struggle—or series of struggles. In the colonial period, the heterogeneous population, the frontier conditions, and the prominence of the church in political affairs made it difficult to establish any formal legal system at all. In fact, in some of the colonies lawyers were about as popular as is a “fifth columnist” today at a meeting of the Dies Committee. Later when it was generally accepted that there was a place in our society for lawyers, judges, and a legal system, other questions remained to be settled. Whether the common or civil law would be basic, unconstitutionality or judicial supremacy, and codification of the law were among the many problems faced in the development of the legal system.

Professor Aumann’s attitude toward the legal system as it has developed is a friendly one—some may think too friendly. Perhaps this attitude would explain the questionable conclusion: “After that decision [Marbury v. Madison], the doctrine [of unconstitutionality] was accepted quite generally by state courts, state legislatures, and the people generally” (p. 191). The footnote to the sentence and the discussion on pages 160 and 182 seem to contradict the statement. A person less friendly toward the legal or judicial system might have considered the post-Civil War period simply as a continuation of the “struggle for power” between the legislative and judicial branches, with, of course, an increase in the volume of litigation due to the war and changing economic conditions.

The author apparently fails to see any political motives behind the actions of courts or the defenders of the status quo in the legal system, but frequently those advocating changes are referred to as Jeffersonians, radicals, or “hostile to the courts for partisan reasons,” etc.

“For those . . . who are interested in the American legal system in a general way, . . . it is hoped that this study will further a better appreciation of the problems which have attended its growth.” So says the author in his preface; and the reviewer believes, whether one agrees entirely with his thesis, that Professor Aumann has accomplished this purpose.

P. S. SIKES.

*Indiana University.*

*The Immigration and Naturalization Service.* THE SECRETARY OF LABOR’S COMMITTEE ON ADMINISTRATIVE PROCEDURE. (Washington, D. C.: Department of Labor. 1940. Pp. 159. Mimeographed.)

On September 23, 1938, the Secretary of Labor appointed a committee to study immigration practice and procedure and to make recommendations for the improvement of the Immigration and Naturalization Service of the United States Department of Labor. After an intensive appraisal, the committee, consisting of Marshall E. Dimock, Henry M. Hart, and John McIntire, released its findings on May 17, 1940. The Service was transferred to the Department of Justice in June, 1940, but the com-

mittee's basic recommendations were not thereby made inapplicable.

The committee's investigation was restricted to an examination and evaluation of existing procedures of admission and deportation of aliens. Procedural aspects of the naturalization functions of the Immigration and Naturalization Service were not included in the survey. In an introductory chapter of the report is sketched the historical development of federal policy toward aliens which culminated in the present drastic exclusion and deportation laws. In succeeding chapters are discussed the steps in the exclusion and deportation processes and the problems connected with them; the legal position of the alien in immigration proceedings; field office practice and procedure; central office practice and procedure; the form and structure of the governing law; improvement in central office organization; and relation of personnel to improved practice and procedure. The committee's recommendations are summarized in a concluding chapter.

With few exceptions, the committee found the work of the special boards of inquiry in exclusion hearings to be one of the least satisfactory aspects of the Service. Important differences in enforcement within and between localities and lack of a standardized form of examination were attributed to defective administrative supervision and control and to unfit personnel. In deportation proceedings, aspects of investigation and arrest were found to entail possibilities of abuse; opportunities for fair hearing and the requirements of due process were inadequate.

The committee's recommendations included suggestions for the development of administrative supervision of a character to eliminate the great differences in enforcement policy; modification of deportation procedure so as "to provide a maximum assurance that each case will receive full and careful consideration"; reorganization of the central office to strengthen internal operating efficiency; preparation of an administrative manual; and improvement in recruitment policy and the development of a personnel training program.

LUELLA GETTYS.

*Baltimore, Maryland.*

*Public Relief, 1929-1939.* BY JOSEPHINE C. BROWN. (New York: Henry Holt and Company. 1940. Pp. xx, 524. \$3.50.)

Miss Brown has undertaken and successfully completed a task that many have long felt to be urgent, and we now have a most readable, well documented, general but comprehensive account of the public relief policy of the last decade. The account is, in the main, chronological; the central problems and policy issues are discussed from a background of the four periods into which Miss Brown has divided her book. The short introductory section covers the years prior to 1929, and includes a discussion of the

concept of public responsibility for relief programs, and an analysis of the now well perceived deficiencies of state and local policy and administration of that long ago period.

Part II is devoted to the period which extended from the early state and federal fumbings in 1929 and 1930 to the loan program established by the Emergency Relief and Construction Act of 1932. Miss Brown critically evaluates the shortcomings and the successes of this program, and there is some discussion of the state administrative and policy changes made necessary by the R.F.C. administration of the act. The longest section of the book, Part III, is devoted to the Federal Emergency Relief program, and to the several incidental and supplemental lines of action during the years 1933 to 1935. Full consideration is given to both policy determination and administrative action as it affected governmental operations at the federal and state levels, and there is a lengthy treatment of such issues as direct versus work relief, relief in cash or in kind, and the means used to determine eligibility for relief.

The author has chosen the optimistic title, "The Beginning of a Permanent Program," for the fourth and last part of the book. The permanency which she notes is partly that centering around the whole Social Security program, and partly that resulting from a clearer understanding as to the respective responsibilities of the federal and state governments. The retrogressions which transpired at the state-local level after this decision was made are fully noted, but the author also stresses the gains carried over from the days when a fuller federal responsibility obtained. The tables, charts, and graphs liberally interspersed throughout the book are well selected, are used with care and precision, and add to the expository treatment. A lengthy appendix and a comprehensive, topically arranged bibliography add to the value of the book.

The ambitious scope of Miss Brown's volume is both its strength and its weakness. Her aim was to give us a complete but general account, and this she has done admirably. With this as her goal, she could not easily emphasize all of those special aspects of the development of welfare policy in which the scholar in the fields of federal theory, pressure politics, public finance, and public administration is interested. Federal grants to the states are discussed with little consideration of the administrative difficulties encountered when an attempt is made to specify some formula on which these grants may be based. In the sections dealing with the political pressure groups seeking federal financial aid, the emphasis is on the demands and programs of social welfare experts and workers, and there is almost no mention of the pressures exerted by state and local governments and their officers. One can agree with Miss Brown that relief standards have been and still are low, but these low standards are in part based on financial considerations. A full appraisal of these standards cannot be

made without relating them to tax programs, indebtedness loads, and the demands of alarmed and highly vocal tax-payers' organizations. One notes with no little surprise that there is almost no material in this book on the financing of relief, other than statistical data on the amounts appropriated and spent, or tables on average expenditures per case. Similarly, the discussion relating to federal-state administrative relations leaves much untouched. However, these and other related problems have been and will continue to be discussed in the more specialized monographs. In the meantime, we now have an excellent general account.

A. N. CHRISTENSEN.

*University of Minnesota.*

*The Constitution of England from Queen Victoria to George VI.* By ARTHUR BERRIEDALE KEITH. Two volumes. (London: Macmillan and Company. 1940. Pp. lv, 485; ix, 515. \$7.50.)

This addition to Professor Keith's long list of works on British dominion and home government may be compared with several other recent books: his own latest revision of Ridge's *Constitutional Law*, R. K. Smellie's *Hundred Years of English Government*, and W. Ivor Jennings' recent *Cabinet Government and Parliament*. All of these deal mainly with the century since the Reform Act of 1832; but, while Smellie traces the historical development in three main periods, the others are systematic treatments of institutions, in which the emphasis is on the more recent working of the British system.

In comparison with Jennings' books, Keith gives more attention to legal problems and less to non-legal practices, though the latter are by no means ignored. Jennings deals with the cabinet and Parliament at much greater length; while Keith deals more fully with other governmental agencies outside the scope of Jennings' special studies—such as the crown, the administrative services, the judiciary, and the rights of subjects and status of aliens.

The greater emphasis on legal problems is indicated by a table of about 500 cases, which is, however, only about one-half of the number cited in the author's *Constitutional Law*. This difference is to a considerable degree explained by the greater attention given in the *Constitutional Law* to the judiciary and to the British Empire. The latter subject, indeed, is here only referred to in a brief chapter on imperial affairs. Local government is deliberately omitted from the present work. On the other hand, greater attention is given to the crown, the cabinet, Parliament, the executive departments, and party organization than in the *Constitutional Law*.

While published in 1940, the main text does not deal with events after 1938. The preface, dated July 29, 1939, notes developments up to that

time; and a postscript covers the next few months, including legislation after the beginning of the war.

As usual, Professor Keith does not hesitate to express his opinion in incisive language, and he finds occasion to criticize actions by all political parties. He is, however, emphatic in opposing proposals that the Labor party, if it comes to power, should proceed to make drastic changes in the economic system under an Emergency Act, to be passed by putting pressure on the king to create peers without waiting for the two-year delay under the Parliament Act of 1911. On the whole, however, he believes that the pressure of foreign affairs would operate to prevent such a constitutional crisis.

JOHN A. FAIRLIE.

*University of Illinois.*

*Suicide of a Democracy.* BY HEINZ POL. (New York: Reynal and Hitchcock. 1940. Pp. xii, 296. \$2.00.)

Before 1933, Herr Pol was a journalist devoting his able pen to leftist periodicals, an activity which brought him, after Hitler's accession to power, years of exile first in Prague (if this reviewer remembers correctly) and later in Paris. After the outbreak of the current war, he had the misfortune to gain a first-hand knowledge of various French concentration camps. One chapter of his book is a vividly documented account of the stupid, inhuman, and infamous treatment the anti-Hitler refugees were subjected to by the French. For his version of why the Third Republic collapsed, Herr Pol is well qualified both by his parallel experience with the fall of the Weimar Republic and by a considerable journalistic *flair* which enabled him to turn newspaper material, substantiated rumors, and indirect information to good advantage. According to his narrative, the fall of France should be attributed to the undermining activities of out-right fascist groups such as the *Cagouards*, to Bonnet and the Fifth Columnists of native and German extraction, to the techniques of anti-Semitism and separatism—the latter decidedly overrated—and, last but not least, to the generally pacifist and defeatist attitude of the French masses. Needless to say, the pernicious "spirit of the Maginot line" comes in for a fair share in the contributing causes.

The best chapter is the one on Georges Mandel, whom destiny evidently had groomed to be the Gambetta of 1940, and who still may play his rôle in the resurrection of the true France provided that the French bootlickers of Hitler let him survive. Very little, however, of the information offered is actually new; even minor details which to the author seem revelations were known in this country, not to speak of one who had occasion to read European newspapers. Much of the material is based on conjecture and hear-say from second and third sources. How should Herr Pol know

what has been said between Daladier and Bonnet (p. 87, 96) or between Mandel and Bonnet (p. 171)? Important figures such as Doutry or Sieburg are not even mentioned. Herr Pol had no access to the councils of the mighty; thus we are at least mercifully spared the vainglorious charlataneries of Jules Romains. On the other hand, Herr Pol's presentation bears no comparison with André Maurois' report, which is based on authentic inside knowledge. This may explain why the book, besides containing a considerable number of plain inaccuracies and untenable statements, tends to magnify secondary causes and to minimize what appears to be the primary issue of the French *débâcle*, namely, the technical and moral degeneration of the French military caste. Not the politicians failed France—they were as bad or as good as before and after 1914—but her General Staff, with which no civilian government, whatever its political color, dared to interfere. Sedan 1940 closely resembles Sedan 1871, and there was, under the same token, Jena and Auerstädt, and the military disaster of 1918 on the other side of the Rhine.

Even with such reservations, this account by an observant journalist is useful when read with a proper sense of proportion. As a source of objective information, it is of little value.

KARL LOEWENSTEIN.

*Amherst College.*

*The United States in World Affairs, 1939.* BY WHITNEY H. SHEPARDSON AND WILLIAM O. SCROGGS. (New York: Harper and Brothers. 1940. Pp. xiv, 420. \$3.00.)

This is the latest of the annual volumes by Shepardson and Scroggs published under the sponsorship of the Council on Foreign Relations. Uniform in plan and format with its immediate predecessors, the book succeeds remarkably well in combining the topical and chronological approaches without either excessive repetition or distortion of continuity. This is, in itself, an achievement of no mean importance—a thing which will be attested by all who have attempted a similar task.

Since American foreign policy during 1939 was essentially passive, drifting with the rushing stream of events which carried Europe over the brink of disaster, this volume is focussed rather less upon America and more upon Europe. Indeed, one feels that the authors were so absorbed in the European disaster that they were forced to remind themselves time and again that their primary task was to appraise the American reaction to European disaster and not to chronicle the details of the disaster itself. So extensive is the treatment of European affairs that one can use the volume, not alone as a chronicle of American policy, but also as a convenient reference book for world happenings during that fateful year.

The inclusion of the customary chronicle of important events in other countries is a further aid in this connection.

The authors of these volumes have never set themselves up as impartial chroniclers jotting down the happenings of the year with all the impersonality of a time-clock. They have always asserted their right to inject personal and critical observations into the record, and they have always written their accounts in a breezy journalese showing little taint of that mustiness which is the stylistic disease of the academic historian. The virtues and defects of this policy were never more apparent than in this volume. There are passages of excellent writing; there are other passages in which the prevalence of colloquial expression is a source of weakness rather than of strength. Also, there are many people who will disagree with the authors in their unsparing criticism of the things and persons that they dislike. Thus, this reviewer, at any rate, objects strongly to a summarization of the record of the French Popular Front in the following terms: "In the autumn of 1938, after experiments with currency devaluation and with an ideological social program which failed to produce the promised results, France returned to the prosaic task of promoting recovery by economy and hard work."

Fortunately, the virtues of the volume far outweigh these defects. But as American policy in a war-torn world continues to encounter greater and greater strains and tensions, the authors may face a situation in which they will be forced to decide whether they are actually writing contemporary history or tracts for the times. Both are valuable, but not in combination.

GRAYSON L. KIRK.

*Columbia University.*

*The War: First Year.* BY EDGAR MCINNIS. With a Foreword by Raymond Gram Swing. (New York: Oxford University Press. 1940. Pp. xvi, 312. Maps. \$1.50.)

*Chronology of Failure: The Last Days of the French Republic.* BY HAMILTON FISH ARMSTRONG. (New York: The Macmillan Company. 1940. Pp. viii, 202. \$1.50.)

The chronicling of events in flux calls for extraordinary fortitude on the part of authors. So swiftly flow the currents of contemporary history that it is difficult for its recorders to find firm footing. Happily, both of the authors under review have built, though differently, from rock-bottom consideration of essential facts.

Solid ground underlies McInnis' praiseworthy effort at interpretation, which appears with the sponsorship, though not the responsibility, of the Canadian Institute of International Affairs. To him, the incentive period



leading to war began with the advent of Hitler to power on January 30, 1933. With swift, deft strokes, he covers the "Background and Origin" of the war, interpreting the complex series of events leading up to its outbreak and portraying clearly and precisely the totalitarian point of view as well as the dual British policy of appeasement and rearmament. In four fact-packed chapters, McInnis describes the initial military and economic situation, then details the remaining months of 1939, the first three of 1940, the period from April to June 15, and finally from June 15 through August. There is excellent summary, fair comprehensiveness of view—although the Far East engages the author's attention only marginally—and a wide range of verified, carefully organized economic, naval, military, and political data. The volume poignantly portrays for citizens of democratic states the consequences of inaction and defeat which it is still within their power to avert. For the American reader, Raymond Gram Swing furnishes an excellent foreword, sharply attacking the cultivated incredulity of our citizenry, the deliberate dulling of meaning and refusal to understand the pattern of events by persons overwrought by a "propaganda" complex.

*Chronology of Failure* represents an initial effort to disengage, from the *mélange* of contradictory reports and rumors, the actual structure and sequence of events in the history-making "thirty days' war" that brought the Third French Republic to an end. From a perspective born of close personal observation and an opportunity to check official records, the distinguished editor of *Foreign Affairs* portrays with objectivity and dispassionateness the successive phases of the inexorable drama of defeat.

Summarizing the successes and failures of the Allies before the catastrophic tenth of May, Armstrong highlights the crucial defects in Allied defense policy—the failure to come to an understanding with the Belgians and Dutch, and to force Mussolini from the equivocal position in which his threats to, and supplies from, the Allies continually grew. France and England are revealed to have been, on the eve of the crisis, equally in the valley of indecision—as regards Finland, the Near East, Turkey, for example—and deeply internally divided. There follows the chiseled narrative of disaster, in which England prepares for real war while France collapses. Armstrong's keen sense of the relevant makes him include events, no matter how geographically remote, when there are direct and causally connected repercussions. Thus the utterances—and timing—of Hitler and Lindbergh (e.g., pp. 98, 102) are laconically put in juxtaposition. The positive reactions in American foreign policy are also carefully brought into focus. Compellingly, tragically, the pages devoted to "Peace" (Chapter IX) record the emergence first of the aged authoritarian Pétain, then of the sinister Laval, to reorient the fortunes of beaten France. "The Moving Finger writes . . ."

Why did France fall? For Armstrong, the evidence points to a failure to

coördinate foreign and military policy; too passive and negative a conception of defense; insufficient material; deep-rooted social and political divisions diminishing the national will to resistance; a false sense of security—"a Maginot Line in the Mind"—to which must be added the superior resources, organization, and striking power of the enemy. The lessons for America are made clarion clear. The basic failures chronicled by Armstrong are dual—failure of political imagination to foresee inescapable consequences, and failure of national will to act in time. To this reviewer the chronicler's incisive analyses appear both penetrating and admonitory. It is to be hoped that they will not prove retrospectively to have been undecipherable Handwriting on the Wall.

MALBONE W. GRAHAM.

*University of California at Los Angeles.*

*The Economic Causes of War.* BY LIONEL ROBBINS. (London: Jonathan Cape. 1940. Pp. 12, 124. \$1.35.)

Although he approaches the problem of war from a wholly different angle, Lionel Robbins reaches much the same conclusion as Bryce Wood in regard to its cause and cure. The problem of war, he writes, can be solved only by important limitations upon "independent sovereignty" in a genuine federation of states (p. 104).

Robbins' approach is that of the classical economist. The body of the book is devoted to a critical examination of the various theories which have attributed primary importance to the economic causes of war. The interpretations of the Marxian doctrine of imperialism by Rosa Luxemburg, J. A. Hobson, Bukharin, Kautsky, Lenin, and Marx himself are examined and found wanting. Robbins finds no logical reason for imputing to capitalism the inevitable tendency toward under-consumption in the home market, leading to a necessity for expansion in foreign or colonial markets. Nor does he agree with Lenin that capitalism necessarily tends toward monopolistic controls which acquire political power and induce the various governments to embark upon conflicting imperialistic ventures to monopolize sources of raw materials, markets, and opportunities for investment in undeveloped areas. While there is nothing illogical about this argument, historical studies indicate that it is based upon wholly false assumptions in regard to the mentality of financiers and investors. Case studies have indicated that such persons have more frequently been unwilling tools of imperialistically-minded governments than the aggressive controllers of such governments (p. 57).

The author's constructive analysis of the causes of war reduces economic phenomena to a minor rôle. He does not go the whole way with R. G. Hawtrey in holding that wars arise from struggles for power and that economic resources are of significance only as they contribute to

political power (pp. 63-64). He recognizes that power may sometimes be wanted to achieve economic purposes such as augmentation of the welfare of a class or of a nation, and that when much of the world has gone in for economic self-sufficiency, even states not so disposed may be justified in embarking upon similar policies in defense. In such a situation of general obstruction of trade and capital, he recognizes that territorial expansion may sometimes become urgent for certain states. This analysis, however, only emphasizes that the root cause of war lies in "the existence of independent national sovereignties. Not capitalism, but the anarchic political organization of the world, is the root disease of our civilization" (p. 99).

The author's scholarly criticism of widely propagandized theories about the causes of war should be read by publicists and historians, who have been far more free in attributing war to economic causes than have the economists.

In an interesting appendix, the author discusses the meaning of economic causation, with the somewhat unsatisfactory conclusion that an economic objective is a "way of securing means of satisfying ends in general" (p. 117). The same might equally be said of a political objective. While wealth may be a means to power, political power may be a means to wealth. The meaning of these words requires further analysis.

QUINCY WRIGHT.

*University of Chicago.*

*Majority Rule in International Organization; A Study of the Trend from Unanimity to Majority Decision.* BY CROMWELL A. RICHES. (Baltimore: The Johns Hopkins Press. 1940. Pp. x, 322. \$2.75.)

In 1933, Dr. Cromwell Riches published an illuminating study entitled *The Unanimity Rule and the League of Nations*. That study "revealed a rather astonishing number of ingenious devices by which the League organs, especially the Assembly, had escaped the rigors of the restrictive unanimity rule, in many cases approximating majority decision."

In the present volume, Dr. Riches presents the results of several years' study of voting procedures in other international organizations, particularly the public international unions. Although this book is designedly more specialized than those of Woolf, Reinsch, and Sayre, no one with any pretense to knowledge of the public international unions can henceforth afford to neglect it.

Dr. Riches has conveniently classified his treatment of majority rule into the following chapters: "Unanimity in Conferences of Public Unions," "Majority Vote in Conferences Exercising Legislative Powers," "Conferences Acting *Ad Referendum*," "Bodies Having Powers of Sanction," "Decision in International Bodies Controlling Territory," "International

River Commissions" (two chapters), and "Administrative and Technical Commissions." There follows an excellent chapter, "From Equality to Qualitative Representation," and an informing and thoughtful summary.

Majority action in some form, the author writes, has been much more widely accepted in international organizations than is generally appreciated. A strict application of the unanimity rule would have prevented much of what has been achieved by the public international unions. In actual practice, therefore, devices have been found to temper the unions' sterile tendencies.

The book is well written, scholarly, and an important contribution to our knowledge of international procedural law and practice.

HERBERT W. BRIGGS.

*Cornell University.*

*Peaceful Change and the Colonial Problem.* BY BRYCE WOOD. (New York: Columbia University Press. 1940. Pp. 161. \$2.00.)

Students of international organization will find in this monograph much food for thought. Although it was prepared before the outbreak of the war in September, 1939, Dr. Wood's discussion is timely and helpful. It is concerned with the problem of peaceful change, with colonial readjustments as the central theme. Chapters of the book deal with these topics: "The Nature of Peaceful Change," "The Limits of Peaceful Change," "British Reactions to German [Colonial] Claims," and "Preparation for Peaceful Change."

After pointing out the importance of peaceful change in a dynamic world society, the author emphasizes the necessity of proper timing and of optimum concessions. Using various historical examples, he refutes the theory that territorial modifications are impossible without offending the honor or interests of the states which make them. There are, however, no fixed limits to peaceful change. Rather, the limits are flexible, and are determined by fluctuations in confidence and by the ability of states to coerce each other.

Unfortunately, as the author makes clear, concessions can be made best at the time when they seem least necessary. For example, England might have done much in 1926 to clear up the colonial problem with Germany. But the Berlin government was then relatively weak *vis-à-vis* London. By the time when Germany had grown strong enough to make her demands heard, Hitler had become so blatant as to arouse fears among the British leaders. While for a time before Munich, some of these leaders were willing to reopen the colonial question, in a sense of fair play and in recognition of the psychological (though not economic) aspects of the problem, they were soon disillusioned and came to regard the matter as no longer debatable.

The author is concerned here with only one segment of the general prob-

lem of peaceful change. He recognizes that in 1939 the colonial issue was not a basic cause of friction between Germany and England. But in exploring this issue he throws much light on the more fundamental question of how nations can deliberately readjust their interests, attitudes, and policies so as to live together in peace.

S. D. MYRES, JR.

*Southern Methodist University.*

*Toward a New Order of Sea Power.* BY HAROLD AND MARGARET SPROUT.  
(Princeton: Princeton University Press. 1940. Pp. xiii, 332. \$3.75.)

During 1939, the Sprouts published a domestic survey of the American Navy from its inception through 1918, under the title of *The Rise of American Naval Power*. Its sequel, the present volume, offers a broader view of naval affairs by placing American policies in a world-wide setting. *Toward a New Order of Sea Power* takes as its theme global naval problems which led to, and were dealt with by, the Conference on the Limitation of Armament held in Washington, D. C., during 1921 and 1922. In tracing the background for the Conference, the Sprouts open with the 1890's, characterized by strong British control over the world's chief water routes. They then list some of the elements which tended to destroy British supremacy at sea, including the expansion of the American and Japanese navies and the development of submarines and airplanes. Political efforts to cope with these changes, through the Peace Conference of 1919, the Anglo-Japanese Alliance, and other channels are examined to provide a setting for the Washington Conference.

Approximately half of the volume is devoted to the Conference itself. Preparations, the diverse interests of its members, the attitude of the press and other groups toward its proceedings, efforts to win concessions or reach compromises, and the final results of the Conference are passed in review. Though portions of this material have been covered elsewhere, in treatises on the Conference, the Sprouts have improved on the conventional presentation in two particulars. They have incorporated the results of interviews and of the examination of unpublished diaries of participants in the Conference. They have also treated the submarine and airplane phases of the Conference in the light of the current importance of those instruments, rather than on the basis of the blurred vision of the Conference's contemporaries.

Once their chronological account reaches the year 1922, the Sprouts quickly halt their labors. The publisher hints at the reason, by remarking on the jacket that "so great was the volume of material gathered by the Sprouts that another book will be necessary to bring the study to the present time."

Would such a sequel represent a drastic change in the general outlook of

the present volume? The reviewer is inclined to reply in the negative. The Sprouts were writing of the Conference after the naval building limitations it had adopted had been abandoned and a new arms race was under way. Possibly with this development in mind, the Sprouts avoid any one-sided, sentimental attitude toward the Conference that might be upset by further research covering the last twenty years. Likewise, the Sprouts comment on the extent and nature of an American fleet capable of defending the United States against even the full force of the British fleet, in their discussion of the basis for naval limitation in 1922, but handle the issue in a manner that reminds one of some of the latest comments on the world emergency. The Sprouts here present us with "ancient history" to be sure, but ancient history written in the light of modern knowledge and current problems.

In covering their subject, the authors proceed in a very well organized vein, employing a lucid style, and providing extensive documentation. The volume should lend itself to very effective use as assigned reading for the limited period it covers. The reviewer hopes that this period may be extended in the near future by an equally valuable sequel.

WILLIAM BEARD.

*University of Wisconsin.*

*Studies in Legal Terminology.* BY ERWIN HEXNER. (Chapel Hill: The University of North Carolina Press. 1941. Pp. vi, 150. \$1.50.)

Only one of the six essays included in this volume deals with the sort of narrow technical problem which the title might suggest to the average reader. This is Essay III, entitled "Legal Rules Manifested in Human Language." Here there is a summary of the different ways in which legal propositions may be manifested ("Sign Vehicles"), and a brief reference to the technical problem of interpretation. The book as a whole deals in "fragmentary and simple manner" (as the author himself says) with certain key concepts in general jurisprudence. It is not expressly stated, but it is evident from the concepts selected for treatment, that the inspiration for Dr. Hexner's study is the appearance of political and legal totalitarianism in Europe. It is also a fair inference, although the language of controversy is studiously avoided, that the author is attempting a re-statement of what remains an essentially positivist position so as to lend as little aid and comfort to the dictators as possible. In doing this, he is not always, in the opinion of the reviewer, successful; but the possibilities suggested are ingenious and worthy of serious consideration.

Essay I ("Rules of Social Conduct") identifies legal rules as belonging to a separate rule system—one based upon arbitrarily created means of influencing human conduct. The feeling for justice figures here as merely one of the conditions limiting arbitrariness in a purely factual and external

sense. In Essay II ("Legal Rules in a Legal System"), the concept of a legal rule is made dependent upon its being part of a *system* of rules in order to reject the legality of a postulated single rule conferring the whole power over human conduct on one man. Dr. Hexner seems to assume that this excludes despotism as a legal order. As a matter of fact, it only excludes an unlimited discretion in the despot to proceed from case to case as his fancy of the moment dictates. If the discretion conferred is to make *rules*, delegation will secure a *system* of rules without, however, substantially reducing the practical possibilities of despotism. It is quite true that if the necessity for a system of rules is interpreted to require the elimination of all discretion in the magistrate, this would constitute a serious handicap to arbitrary administration. But it would also constitute a handicap to good administration. In short, a reliance upon the systematic character of the legal order to exclude despotism may easily result in throwing out the baby with the bath.

In Essay IV ("Some Elements of the Concept Legal System"), the internal characteristics of the legal system are explored as the author returns to the problem of totalitarian "law." Every legal rule (except the constitutional premise which must be conceived metajuristically) must be "linked" with preceding legal rules. In other words, it must be set in a jurisdictional context so that its validity may always be tested by reference to the authority of its maker. Then comes the most significant requirement: "The concept of what today is called a legal system implies the ability of the individual, whose conduct directly or indirectly is determined by the rule, to ascertain whether or not the rule, which presents itself as a legal one, is (by being covered directly or indirectly by the constitution) a *legal rule*" (pp. 59-60). This proposition derives no obvious support from positivist premises. It constitutes an oblique reference to private rights as a limitation on the institution of government. But in the mouth of one who recognizes no distinction between government and law, it is difficult to see how private rights can be other than a technique of government control. Had Dr. Hexner started his terminological analysis with an investigation into the relationship between rights and law, the problem would have been faced directly—with salutary effect for the ensuing argument, if not for the author's peace of mind.

The following two essays on "Court Systems as Determined by Specific Legal Orders" and "Legal Security," respectively, limn a variety of topics. Separation of powers, the rule of law, law versus administration, and judicial review are touched upon suggestively. On the whole, the treatment is orthodox positivist-analytical, although the author's desire to recognize institutional distinctions not readily cognizable from this point of view crops up from time to time. Thus he recognizes that finality of judicial decision is not equivalent to judicial absolutism and that acts of a supreme

appellate tribunal outside of its jurisdiction are not legal acts, even if put into effect by the law-enforcing machine. It is not clear, however, how law can be distinguished from what the courts, or any other agency, effectively say it is, assuming a positivist basis for law. Indeed, the author concludes his observations on this point with a reference to Professor Kocourek which concedes the ultimate factual supremacy of whatever agency of government exercises the power without successful factual interference by another agency of the same government (p. 97).

The fact that these essays have inspired the reviewer to so much critical comment testifies to the vitality of the problems discussed. It is not intended as a reflection upon the work itself.

KENNETH C. COLE.

*University of Washington.*

## BRIEFER NOTICES

### AMERICAN GOVERNMENT AND POLITICS

Case studies of local party machines inevitably contribute to an understanding of the democratic process. Students of politics will be grateful, therefore, to Professor Dayton D. McKean for his report on one of the most conspicuous of these organizations in *The Boss; the Hague Machine in Action* (Houghton Mifflin Co., pp. xviii, 279, \$3.00). Bringing together material not heretofore easily available to scholars, Professor McKean has, as an incident to his main purpose, produced a portrait of one of the least lovely and winsome personalities in the American political scene, Mayor Frank Hague of Jersey City. The Hudson county machine and its master obviously deserve the attention paid them in this useful and informative volume, since they possess the keys to power in one of the important states of the American Union. The author has drawn heavily on rich materials turned up in a series of legislative investigations of the organization, testimony taken in a number of judicial proceedings involving Mr. Hague, the knowledge and experience of a number of veteran newspaper men, plus some personal investigations of his own. His book depends for its interest almost exclusively on the intrinsic fascination of the material itself. In terms of this material, the author manages to provide an answer to most of the questions that the reader would be apt to ask about a local party machine—its organization, personnel, finances, discipline, etc. The most disturbing tendency reported is the tendency of the Hague machine to become a social system, "the infiltration of groups and associations" which might become centers of resistance. This technique is unpleasantly totalitarian in its implications. While no one will be surprised to learn that the Republican opposition in Jersey City is a captive of the dominant machine, it is clear that the efforts of the Hague organization to neutralize



opposition seem to have been carried to extraordinary lengths in the group of communities which, the author notes, get an exclusively posterior view of the Statue of Liberty. The facts plus the interpretations assembled in this book add up to a tremendous indictment of the Hague machine. It is to be regretted, however, that Professor McKean did not make a more definite attempt to formulate a theory of machine politics upon the basis of his facts.—E. E. SCHATTSCHNEIDER.

In the third edition of his *The American Problem of Government* (F. S. Crofts and Co., pp. ix, 596, \$3.75), Professor Chester C. Maxey follows the general method used in the second edition, organization and content remaining unchanged, although there has been considerable general revision and some chapters have been completely rewritten. The resulting elimination of some hundred pages provides an unusually compact and concise commentary on American government. Professor Maxey continues to emphasize the importance of "political fundamentals," devoting the first third of the volume to a discussion of the individual and society, the evolution of the state, political doctrines, political forces, and contemporary political systems, followed by an analysis of the American constitutional system, the structural and functional features of American government, and a discussion of democracy in the United States. The remainder of the book is divided between a survey of governmental processes and a discussion of present-day problems. The book is well organized, and the factual information clearly and simply presented, particularly in the sections dealing with civil liberties and with the growth of governmental functions. However, in view of the author's insistence upon stressing "principles, processes, and problems," rather than forms and mechanisms, it is to be regretted that more space is not devoted to the dynamics of American politics and to the institutional nature of the Constitution. The impact of social, economic, and ideological forces on the governmental process is hinted at, but not sufficiently underlined. In view of the debates of recent years over the growth of administrative power, the discussion of quasi-legislative and quasi-judicial agencies and of judicial control over the administrative process is surprisingly inadequate. The same may be said of many other important topics—the relation of judicial philosophy to judicial decision, particularly in the constitutional field; the committee system and seniority as determinants of legislation; the uses and abuses of the senatorial filibuster; the pressure group and the lobbyist as integral parts of the legislative process. Such omissions present a serious problem when the text is the main source of student information. However, where adequate background material is available from instructor and library, the volume provides an excellent guide-book for the exploration of our governmental mysteries.—THEODORE H. SKINNER.

The increasing conviction of political scientists that the interdepartmental waters where government and economics meet deserve exploration receives substantial support from Donald C. Blaisdell's *Government and Agriculture* (Farrar and Rinehart, pp. xiii, 217, \$1.00). The principal merit of the volume is that it brings within reasonable compass a description of all the federal agricultural programs, and makes this well-written description available at a surprisingly low price. The first chapter describes the evidences and causes of agriculture's maladjustment with the rest of the nation's economy. A second chapter discusses in general terms the frequency of the federal government's "responses" to agriculture, and the influence of farmers' organizations in stimulating these responses. Succeeding pages discuss production control and the ever-normal granary; marketing services, controls, and expansion programs; the causes of and remedies for soil erosion; agricultural research and its implications of increased productivity, larger farms, commercialized farming, and industrial use of farm products; and security for economically depressed farm groups. The concluding sections discuss matters of particular interest to political scientists—democratic referenda, farmer-committees, farm coöperatives, soil conservation districts, and the administrative organization and operation of the Department of Agriculture. Dr. Blaisdell was for four years administrative assistant to M. L. Wilson, Under Secretary of Agriculture. His book, however, reveals no secrets, and, except for a very few pages (e.g., pp. 184–185), could have been written by an outsider with access to the more obvious published documents. This fact is perhaps more of a tribute to the splendid series of informative and readable annual reports of the Department of Agriculture and the Agricultural Adjustment Administration than it is a reflection on the author. The emphasis upon what the Department of Agriculture is doing means that too little attention is paid to the real and alleged flaws in the theory and working of the various programs. This neglect of the critical approach is the only serious defect to be found in the book. Dr. Blaisdell has been unusually successful in describing all the significant work of the Department of Agriculture.—JAMES W. FESLER.

During 1940, Stone, Price, and Stone summarized in one volume the conclusions growing out of surveys of forty-eight council-manager cities. This coöperative undertaking was accomplished by a group of scholars in conjunction with the Committee on Public Administration of the Social Science Research Council. Professors Edward F. Dow and Orren C. Hormell have published the results of their survey of one of these cities in a monograph entitled *City Manager Government in Portland, Maine* (University of Maine Studies, Second Series, No. 52, pp. v, 119). Other studies which have grown out of this general appraisal of council-manager

government have tended to emphasize the diverse political, organizational, and administrative aspects which appear under the blanket term, "council-manager government." Portland, Maine, as Dow and Hormell indicate, is unusually individualistic in the lack of administrative integration under the manager and in the subjection of the manager's appointments to the necessity of confirmation by the council. A peculiar feature is the absence of a mayor, at least, in title. The chairman of the council serves as ceremonial head. In view of traditional practices and the organizational pattern, it is not surprising to find the council using a number of committees, meddling in administrative details, forcing department heads to realize how important it is "to play ball with the council." Other handicaps under which the manager labors are the lack of an integrated finance department, the absence of an adequate personnel system, and the use for the police and fire departments of an old-style civil service commission which considers itself a trial court. In spite of these handicaps, conservative councilors and managers brought about a steady reduction in debt from 1923 to 1937. The city operates "within its budget and usually nears the end of the year with a substantial surplus." The authors' familiarity with the political setting of the council-manager plan in Portland has contributed enormously to the excellence of this monograph. The discussion of administration is perhaps not as thorough as that pertaining to the political background, the charter, and the council. The conclusions are admirably frank and incisive.—A. W. BROMAGE.

As Professor James Hart has indicated in his *Introduction to Administrative Law*, the enforcement of administrative decisions and remedies against administrative action are in large part opposite sides of the same shield. Yet the latter subject has received far more emphasis than the former. This was hardly strange in an era of "individualism" in which that abstract hero, the individual, was pitted in relentless battle against an alien power, "the government." Recently the consequences of technological-industrial events have tended to make us look upon government as an agency for the protection of the many by the restraint of the few. In this view, the study of sanctions, i.e., the means of making such restraint effective, assumes a new importance. Mr. G. G. Lentz's *The Enforcement of the Orders of State Public Service Commissions* (University of Illinois Press, pp. 159, \$2.00) is the first book to appear in this country devoted to that subject. With the preoccupations of a lawyer, Mr. Lentz examines "Early Problems of Enforcement," "Application of Fines and Penalties," "Actions to Compel [specific] Compliance," "Powers [of courts] to Punish for Contempt," "Direct Powers of Enforcement" (i.e., contempt powers of the administrative agency itself), "Prosecuting Officers and Agencies," and "Administrative Review and Procedure." Certainly the book is an

important and valuable contribution on the subject of the law of sanctions—but, in the words of Professor Frankfurter, “we must travel outside the covers of law books to understand [administrative] law.” What we need now are statistical studies throwing light on the problem of the relative effectiveness of the various kinds of sanctions. So supplemented, Mr. Lentz’s work would be a major contribution.—WALLACE MENDELSON.

A constant stream of pamphlet material is being added to the literature of taxation. Among some of the more recent studies of particular types of taxes are: C. Lowell Harris’s *Gift Taxation in the United States* (American Council on Public Affairs, pp. 165, \$2.50); L. L. Waters’ *Use Taxes and Their Legal and Economic Background* (University of Kansas, Bureau of Business Research, pp. 92); and *Stock Transfer Taxes* (Committee for the Study of Federal and State Stock Transfer Taxes, pp. 155). Professor Harris’s study of gift taxes in the United States constitutes what is probably one of the most substantial treatments available on this subject. Gift taxes constitute an ancillary tax problem, but an important one, in that such taxes are designed to buttress the strain and stress that develop as a result of the failure to recognize the acts of transfer of economic interests by gift and accounting to the public under the income and estate taxes. After most careful analysis of the problem presented by this form of tax, the author suggests several interesting proposals which are designed to close the chief loopholes of existing estate and gift taxes, and loopholes which impair the effectiveness of the income tax. He suggests certain general laws, the effect of which would be to broaden the base, increase the effective rate, and improve the administration of such taxation. He suggests also that the laws in question would promote a more satisfactory relationship between the state and federal governments and contribute toward a more satisfactory apportionment of the cost of government, because taxes on gifts and estates, for reasons given in the study, operate with relatively little social and economic harm. In his study of use taxes and their legal and economic background, Professor Waters sets for himself a most ambitious objective. His study is designed to give the lawyer and political scientist an historical summary of the legal problems raised by such use taxes, to survey for administrators the techniques of collection of this legislative problem child, to relate this compensating levy to barriers to interstate trade which have recently been so widely publicized, and to give the business man a detailed description of the valuation of this new component of state fiscal systems. He deals chiefly with use taxes on gasoline and general use taxes, including sales taxes. He cites the use tax and its effects upon trade barriers, describes the methods of collection, analyzes the fiscal significance of the tax, and deals with the problems of legality. The study of stock transfer taxes is largely a report made by Dr.

Paul Studenski, director of research for the Committee for the Study of Federal and State Stock Transfer Taxes. After dealing with the nature and problems of the stock transfer tax generally, the study is divided into two general parts. Part I deals with the European and Canadian taxes on stock transfers, and Part II with American stock transfer taxes. In Part I, the English, Canadian, Dutch, French, and German systems are given detailed attention. Part II, which deals with American stock transfer taxes, considers the problem of the taxable basis, the tax structure, taxation of dealer transactions, interstate competition, and methods of collection. The study constitutes a very careful analysis of the problem of stock transfer taxes. Taken together, the three studies present an interesting analysis of these particular taxes in so far as they affect the relation between states and the relation between states and the federal government. They are the best kinds of research on these problems of taxation, but for the average reader they would appear rather technical and detailed. All three studies, however, are a very definite contribution to the literature of public finance.—JOHN W. MANNING.

Proportional representation is knocked all over the ring by Professor F. A. Hermens of Notre Dame in his *Democracy and Proportional Representation* (Public Policy Pamphlet No. 31, University of Chicago Press, pp. 41, \$0.25). Whether or not he succeeds in delivering a "kayo" will depend on the viewpoint with which the reader of his persuasive pamphlet is equipped. He begins with a number of logical arguments: that legislatures are "organs of government" and not purely "representative" bodies; that the majority system "tends to make elections an instrument to achieve 'consensus' rather than a mere 'census';" that P. R. tends to destroy majorities and to multiply parties. This last point is developed at considerable length on the basis of European experience to indicate that by producing extremist parties, proportional representation had much to do with the rise of Mussolini and Hitler. The next to the last section seeks to blast proportional representation in American municipal government, ascribing the difficulties of Mayor LaGuardia with his Board of Estimates and of Cincinnati with its Bigelow to proportional representation. He feels that the larger the city, the more damaging is proportional representation. This section seemed to the writer less convincing than earlier sections, in part because of some loose estimates of the "cost" of proportional representation to New York City. The whole pamphlet, however, is well worth reading if one is not acquainted with Professor Hermens' other publications on the subject. Mr. George H. Hallett, Jr., returns blow for blow in his *Proportional Representation; The Key to Democracy* (National Municipal League, pp. xiv, 177, \$0.25), written in collaboration with Clarence G. Hoag, and a completely revised second edition of a volume published in

1937. Curiously, Mr. Hallett takes up many of the American municipal examples used by Professor Hermens and arrives at diametrically opposite conclusions. He also considers most of the arguments advanced by Hermens and rejects them, to his own satisfaction. A large amount of description of proportional representation in American cities is introduced, in addition to a very brief account of proportional representation in foreign countries. The description of American experience is, perhaps, somewhat damaged as scientific evidence by frequent claims to good government as a result of proportional representation when improved standards were in part a result of the city manager plan or other governmental innovations. However, the material is fully and well presented. Both studies are in the pamphleteering tradition. Hallett's is more interestingly written; Hermens' more logical in presentation. Both are provocative to the political scientist, and in literary style and wealth of illustrative material are far above the average of controversial literature.—G. C. S. BENSON.

In his *William E. Chandler, Republican* (Dodd, Mead and Co., pp. xiii, 758, \$5.00), Leon Burr Richardson has presented a detailed biography of a political figure who played a prominent part in national and New Hampshire politics for more than half a century. Chandler left a mass of letters and other manuscripts, and the book is based largely on these documents. The reader is given a better and fairer insight into Chandler's many-sided character than has hitherto been afforded. Professor Richardson's researches have led him at times to different conclusions from those reached by other writers, as, for example, Oberholzer and Nevins in the controversy over the part Chandler, as Secretary of the Navy, played in the building of the new navy. Chandler's political career began in 1856 and continued with practically no intermission until his death on November 30, 1917. He was a power in state politics and served for sixteen years as a member of the Republican national committee, eight years as its secretary. He regarded the "saving the presidency to Hayes in 1876" as one of his greatest achievements. A full account of this event is given, as well as of Chandler's bitter opposition to Grant's third-term aspirations, his work as Secretary of the Navy, as senator, and as president of the Spanish Treaty Claims Commission. In addition to the Hayes episode, Chandler took great pride in assisting in securing the soldiers' vote in New Hampshire for President Lincoln in 1864, his rescue of the members of the Greely expedition, and his efforts toward the liberation of Cuba. He was a man of strange contrasts: on the one hand, a waver of the "bloody shirt"; on the other, a life-long foe of corporation control of government and an advocate of liberal reforms in politics to the extent of supporting Senator LaFollette for the presidency. He was of a controversial nature, with the

result that his usefulness as a public servant was, as Professor Richardson says, "less than he honestly intended it to be, or than it easily might have been."—EVERETT S. BROWN.

The subject of labor in war-time is of monumental proportions; and there are two respectable ways of dealing with a monumental subject. One is to deal with it in a monumental way, with exhaustive and scientific detail. The other is to deal with it suggestively. The results, although different, are legitimate and wholesome, provided the spirit in which the results are sought is impartial and scientific. John Steuben's *Labor in War-time* (International Publishers, pp. 159, \$1.50) is an essay on the rôle of American labor during the first World War. It is an essay of the suggestive type, but it has been executed in no impartial or scientific spirit. Mr. Steuben set out with a certain point of view—that of discrediting the A. F. of L.'s rôle in the war and justifying the I. W. W.'s—and his prejudices are on some occasions thinly disguised. On the first page of his foreword he asks: "Did post-war developments justify the position of the leaders of the American Federation of Labor in giving unqualified endorsement to the Wilson-Wall Street war aims?" (p. 7). Call it a capitalist peace, if you will. It was all of that. And yet it was more, and Mr. Steuben does not venture to explain why his "Wall Street" financed a bitter campaign against the "Wilson-Wall Street war aims" as embodied in the peace settlement. There are many statements of Mr. Steuben which we would like more specific, and many for which we hunger for citations—although Mr. Steuben's book is not without citations—out of pure interest in the subject. But Mr. Steuben is a cagey writer. Where he is most provocative and belligerent, he is most diffident with his sources. Where, for instance, does he get his information for saying that the federal government "paid all the expenses" for the Minneapolis conference of the Gompers-organized Alliance for Labor and Democracy (p. 113)? And to say that "of all the statesmen of the world, only the leaders of the young Soviet Republic predicted that the Versailles Treaty would be the cause of another and more horrible war" (p. 119) is palpable nonsense. There were other leaders who predicted it also, Clemenceau among them. Can Mr. Steuben be sure that if the will of the Soviet Government had been a little differently cast in 1939 war would certainly have occurred? And was the war upon Finland caused by the Treaty of Versailles? Done in a more scientific way, more could be made of Mr. Steuben's thesis than he himself has made of it. The A. F. of L. leaders swung all too easily behind Wilson's movement to war, and labor suffered bitterly from the aftermath of war.—SMITH SIMPSON.

Evidence of complete realization of the problems facing the planner in the United States is found in the valuable summary contained in *The Pro-*

*ceedings of the National Conference on Planning* (American Society of Planning Officials, pp. 194, \$2.00). In spite of occasional vague excursions into national defense questions, the volume is packed with extraordinarily concise comments on the current problems of physical planning in this country. Moreover, the impact of social conditions upon physical problems is treated in a forthright, realistic manner. The program of the conference included discussions of highway and transport problems, the problems of zoning and decentralization of cities, city planning and housing, tax policy, industrial location, and the relationship of planning to democracy and public education. A significant paper deals with the general question of industrial location as it affects the Pacific Northwest, advocating a regional agency for that area. There is some possibility that the importance of such an agency for industrial development is overrated. Important suggestions are offered regarding the effects of state activity on industrial location. Another discussion describes forcibly the reactions of the political ostrich, California variety, to problems of resettlement. Failure to deal humanely with the migrant worker is resulting in creating problems of community planning which will harass local and state governments for years to come. At several points the failure to coördinate public housing with local planning is discussed rather fully. American experience is evidently repeating the mistakes of a generation of British practice. Several papers describe the increasing importance given to aesthetic considerations in American planning.—LEE S. GREENE.

*The American Empire* (University of Chicago Press, pp. xi, 408, \$4.00), a recent book edited by William H. Haas, is a "study of the outlying territories of the United States." The volume consists of a group of studies made by different individuals selected because of their knowledge of original material, and because they have either lived in the areas discussed or visited them for investigation and study. The volume describes in a very satisfactory manner the geographic and economic background of each territory and weighs its value to the United States. The authors lament the lack of understanding by Americans of the problems existing in these possessions. Events of the last few months have undoubtedly awakened interest in the strategic value of these areas, and should make these studies particularly timely. The major purpose of the writers is to present a graphic description of the natural landscape, the people, the climate, the resources, the industries, and the economic value of the territories in a manner that will arouse interest in them. Success has been attained in this attempt. To the student of government, it seems unfortunate that so little attention is given to the government of the territories and to the ties that bind them to the government at Washington. At a time when the Philippines are on the verge of independence, while other



dependencies are wanting statehood, information of this type would add considerably to the value of the volume.—ROBERT S. RANKIN.

One of the by-products of the work of the President's Committee on Civil Service Improvement is a study by Lewis B. Sims, of the Bureau of the Census, entitled *The Scholarship of Junior Professional Appointees in the Government Service* (mimeographed by the Committee, pp. 228). The undergraduate scholastic records of the 5.1 per cent persons appointed to junior professional positions in the service of the federal government from January, 1935, to March, 1939, were examined and analyzed with Census Bureau thoroughness. The facts led to the conclusion that the government is securing in these junior positions a rather high-grade group of scholars, as indicated by their undergraduate standing. The junior professional persons appointed through the civil service system are better scholastically than those appointed outside of the system. The group studied came from 360 different educational institutions in all parts of the country. The second chapter of the report outlines with painstaking thoroughness the method employed. Eleven separate chapters present data for as many separate professional groups. The social scientists were found to be of the highest caliber of all the groups, indicating that the awareness among teachers of the social sciences of opportunities in government employment in recent years is bearing fruit in directing the interest of the top-ranking students toward federal jobs.—HARVEY WALKER.

Elton D. Woolpert's *Municipal Public Relations* (International City Managers' Association, pp. v, 50, \$1.00) is a timely contribution to the developing science of public administration. Its eleven chapters first appeared serially in *Public Management*, from September, 1939, through July, 1940. Too frequently, a government which deserves good public relations, on the basis of its policies and its operating efficiency, incurs public disfavor because it neglects the human factor. Within rigid space limitations, Mr. Woolpert does an excellent job of analyzing the relations between the city government and its citizens and presenting a positive program designed to better those relations. The first step is a comprehensive survey of existing relationships, which must include not only an appraisal of the public's attitudes and opinions, but also a critical examination of the city administration from within. The weaknesses revealed can then be attacked on several fronts: personnel practices; employee contacts with citizens; physical appearance of municipal employees, buildings, and equipment; procedures for handling inquiries and complaints; tax collection methods; etc. In-service training in public relations is discussed intelligently, as are the problems of organization for public relations and municipal reporting. The monograph merits the careful attention of all interested in improved administrative techniques.—FRANK M. STEWART.

In any discussion of what is to be done about the increasing complexities of government in metropolitan areas, examples of what has been done cannot fail to be helpful. Roland M. Ketcham's *Intergovernmental Cooperation in the Los Angeles Area* (University of California at Los Angeles, Bureau of Governmental Research, pp. 61, \$0.50), a mimeographed study, provides such an example. Choosing some score of representative functions, the author analyzes each with special attention to the mechanics of inter-jurisdictional collaboration. Because the Los Angeles area is not typical of other metropolitan areas, inasmuch as there is no interstate and practically no inter-county situation, the findings may serve as no more than a guide to students of metropolitan problems elsewhere. However, there is enough examination of factors common to all such regions to warrant listing this monograph as a clarifying contribution to the literature of the subject.—HILTON P. GOSS.

In *The Battle for Municipal Reform, 1875-1900* (American Council on Public Affairs, pp. 91, \$2.00), Clifford W. Patton presents a sketch of the salient features of a formative period in American municipal development, the characteristics of which prompted Lord Bryce to label municipal government "the one conspicuous failure of the United States." Chapters on basic conditions and causes, evils of machine politics, arousing citizens to action, the era of reform, the organized movement for better government, improvement of living conditions in the cities, and, better governmental machinery serve to present the story of the "enlistment of public opinion" and the resulting accomplishments thereby made. Less concern is shown for the sources of the ideas used in reform than for the results achieved. Footnote references indicate failure to use valuable source materials, but useful bibliography of primary and secondary materials is presented in the appendix.—H. C. COOK.

#### FOREIGN GOVERNMENT AND POLITICS

Students of the internal business practice and procedure of governments will find interesting a volume entitled *The Art and Technique of Administration in German Ministries* (Harvard University Press, pp. 191), by Arnold Brecht and Comstock Glaser. The volume deals primarily with the German General Code of Administrative Procedure of 1926, in the development of which the senior of the two authors played a leading part. The Code is translated and discussed. This "Code and the structure of German ministries, although the products of monarchical tradition and democratic experiment, have continued without substantial change under authoritarian rule . . . the technique of administration is not immediately dependent on the political form of government." The national government of the United States does not have such an overhead general code.

Our nearest counterpart is to be found in the manuals of practice and procedure of various agencies, or in the collection of laws, rules, and regulations of central control agencies, and office instructions that together constitute the manuals. They are rarely assembled and formally printed. In many agencies, they are mimeographed. Examination of the German Code to see how the problem of making such a code fits the diversities of the agencies discloses the expected, that many rules must be stated very broadly: "What is to be said is to be said clearly and completely, but not verbosely." The book carries one back to the days of the President's Commission on Economy and Efficiency in the Taft administration, when the internal practices of some of the old departments affecting correspondence and filing were so drastically overhauled, and when expositions of filing equipment and office labor-saving devices were a feature of Washington life. The successors to the Commission on Economy and Efficiency were the Bureau of Efficiency, the Chief Coördinator, the Division of Management in the Budget Bureau, and the numerous procedural divisions in the newer agencies. German practice differs from ours in one interesting particular. Under our system, the common practice is for a matter to be referred to the subordinate officer or employee best qualified to handle it. He drafts a suitable written document ready for the signature of the proper higher official and sends it up the line of authority. Intermediate officers read it and indicate their approval, or if they disapprove arrange for conferences or for revision. When it gets to the top responsible official, he signs it. The Germans send up a rough draft which is edited along the way. The responsible top officer signs the rough draft when it is in a form which satisfies him, and then it goes to a combined copying and filing division which makes the official fair copy, certifies to it, and dispatches it. In the reviewer's governmental experience, most written material goes through as originally drafted. It would seem as if the German system would involve more time and labor. Conceivably the Germans have and want a tighter control over their files than we have had. One of our reforms in the days of the Taft Commission was to classify material and to prevent large expenditures in handling material of minor significance. The comparisons between the structure of German ministries and of our own governmental agencies are interesting but somewhat questionable, since the statements regarding our structure strike this reviewer as greatly over-simplified in the effort to get brief generalizations.—LEWIS MERIAM.

In his *Germany: Jekyll and Hyde* (E. P. Dutton and Co., pp. 318, \$2.50), Sebastian Haffner (*pseud.*) attempts to unmask Mr. Hyde, who claims to be Germany as his armies are conquering Europe. Admitting that, at a time when Germany's national frustration matched Hitler's own, large masses of Germans were taken in by the Führer's promises, believing him

to serve an idea while really he was serving only his resentment, career, and theatrical urge, the author today sees a Germany which differs from Hitler's claims. It is a composite of at least four groups of Germans distinguishable by the degree of their adherence to the régime: the Nazis, the loyal population, the disloyal population, and the opposition (not counting the émigrés). To the estimated loyal forty per cent of the population, the maintenance of the Reich is of sufficient importance to make them rationalize themselves into condoning the objectionable aspects of Nazism, while the active Nazi group (twenty per cent) particularly includes those people to whom the "dynamism" of the régime acts as a magnet—the type of personality which during and after the last war acquired a passion for disorder and recklessness and a disdain for the "bourgeois" style of life. The disloyal thirty-five per cent, coming from all social levels, though predominantly from the former organized workers and orthodox Catholics who have retained an instinctive yearning for decency, find themselves enclosed with the supporters of the régime in compulsory organizations, suspected, leaderless, and unable to resort to the classical means of revolt: barricades or general strike. Their passive readiness needs release by some external force. Tiny, scattered groups advocating active opposition (five per cent) achieve little beyond making unpublicized martyrs of their members. If and when Mr. Hyde is forced to surrender, the formula for permanently changing him back into Dr. Jekyll must include, we learn, the revival of autonomous German *Länder* and a "European Concert" of small and middle-sized states held together by an elaborate super-national organization. The book is stimulating and well written. In a few instances (e.g., pp. 48, 60) one would like to see the evidence for the author's assertions.—GERHARD KREBS.

*Czechoslovakia: Twenty Years of Independence* (University of California Press, pp. 525, \$5.00), edited by Professor Robert J. Kerner, of the University of California, is a tribute of scholarship to a country that has suffered tragedy. Though emotion has become somewhat dulled by time and the sequel, the crushing of Czechoslovakian independence may still seem the most flagrant example of Nazi devastation of monuments of politico-social progress. Twenty outstanding American and British scholars (some of Czech extraction) have contributed to this volume designed to record the important contribution of the Czechoslovakian nation to the history of our time in its short span of independence. While motivated by their admiration, the contributors carry out their intention of presenting "an honest, unprejudiced, and frank appraisal." They render the general reader a unique service in compressing into one authoritative volume the basic facts relative to so many phases of the subject: Czechoslovakia's anthropological and historical background, political and constitutional de-

velopment, economic, social, and cultural achievements, foreign relations and in so far as now ascertainable, the course of events leading to political dissolution. The book contains also a poignant commentary on Munich by Karel Čapek, a chronology, and an index. Recurrent in the essays, if not pervasive, is an emphasis upon certain interpretations significant in the contemporary perspective. One is that Czechoslovakia's many-sided achievement received inestimable nutriment from its morally sensitive democracy, and so refuted the thesis that democracy is not socially efficacious. Another inference is that Czechoslovakia's apparent failures, such as the inability to solve her minorities problem, represented fundamentally the failure of a world which intensified her internal difficulties and finally permitted Hitler to exacerbate them deliberately. Yet, as Professor Kerner indicates, Czechoslovakia's downfall, no less than its progress, placed Western democracy in its debt. It revealed the falsity of Hitler's racialist pretensions, unmasked the inordinate extent of his ambitions, and warned the other democracies to prepare their defense.—ALBERT K. WEINBERG.

Mr. Frederic Benham's *Great Britain under Protection* (Macmillan Co., pp. xvi, 271, \$2.50) constitutes an important contribution to the economic history of recent years. Published in the "Commercial and Tariff History" Series of the Carnegie Endowment for International Peace, it provides a well documented, closely reasoned account of Britain's adventure in protection. There is a brief history of free trade in Great Britain and of developments with respect to tariff policy during and after the first World War. A description of the tariff follows, and an account of other forms of protection with special reference to ten most protected industries, like wheat, shipbuilding, dyestuffs, steel, etc. One of the important aspects of British policy affecting both Empire relations and commercial policies with regard to the rest of the world is imperial preference, which culminated in the Ottawa Agreements of 1932; and this receives full treatment. Separate chapters deal with monetary policy, with problems of iron and steel, and with agriculture. There is much good material and sound reflection in the chapter on trade agreements, in which the author sees the beginnings of a more liberal policy, the agreement with the United States in November 1938, marking, perhaps, a new turning point—were it not for the outbreak of the war, which "temporarily put an end to all such hopes." Great Britain adopted protection as a policy in 1931, under stress of the depression and in order to alleviate unemployment. Professor Benham inquires carefully into Britain's recovery and finds that the tariff helped somewhat, without becoming, however, a really "significant factor." This is a very scholarly and valuable book.—MICHAEL A. HELPERIN.

An unusual subject is handled well by Professor William Bradford Willcox in *Gloucestershire; A Study in Local Government, 1590-1640* (Yale Uni-

versity Press, pp. xvi, 348, \$3.00). Any study of government or politics not organized around an individual or an institution must necessarily seem at the same time diffuse and incomplete. This is particularly true when the subject of study is a remote and largely rural county during the period when counties had very little collective political life. What the author of the monograph has given us, therefore, is a series of chapters on a number of important topics, drawing his material from fifty years of the county of Gloucester. He wastes little time on general background, either descriptive or historical; and after analyzing the agencies of the central government that affected the county, he describes the civil and the military officers of government of the county itself, and then discusses specific functional areas of government—taxation, “economic regulation” (of local industry), the Forest of Dean, the towns, the parish and poor relief, and the manor. Nothing in the volume changes the familiar picture of local government as largely *ad hoc* administration by justices, but the monograph is an interesting and useful study of what happened in one county during one period.—E. P. CHASE.

It is generally agreed that India is today an awakened and nationally conscious force; but what has brought this about? Nationalism is a complex phenomenon. Bruce Tiebout McCully's *English Education and the Origins of Indian Nationalism* (Columbia University Press, pp. 418, \$4.50), asserts, however, that the national consciousness of India was due mainly to English education. The existing system of education was introduced into India to make its people imitation Englishmen, or as Thomas (Lord) Macaulay put it, “English scholars.” There was no thought in the mind of the English ruling class of making India a strong and united nation, developing its own potentialities and serving its own destiny. Contrary to English design, and in spite of every obstacle placed in its way, the new education hastened and intensified Indian nationalism. The author, to whom the people of India are only “natives,” takes little account of the political and economic factors which also contributed mightily to the rise of Indian nationalism. A more careful study of the history of English occupation of India will show that nationalism in that country—like that of China, Turkey, Persia, or Egypt—is the natural and inevitable reaction to foreign imperialism. The book, in spite of its apparent superficiality and occasional understatements and exaggerations, is literate and readable.—SUDHINDRA BOSE.

Recent trends in the scope and operation of the Japanese government are examined by Charles B. Fahs in *Government in Japan* (Inquiry Series, International Secretariat, Institute of Pacific Relations, pp. xiii, 114, \$1.00). After tracing the expansion of governmental regulation and activities over the past decade or two in the promotion and regulation of foreign

trade, economic recovery and security, integration of overseas development and domestic control, national defense, social reform and finance, he briefly describes the "reforms and proposed reforms in the political and administrative machinery of the country in proper relation to the new and complex functions of government which have impelled them." He concludes that the trends are due to factors which are international and not local in character, and that the "strictly internal political trends" are not caused by "militarism" or "totalitarianism." He presses this conclusion rather hard. In her control of education, information, and propaganda, he avers, Japan's position parallels that of Great Britain in the present war. Fahs finally distills from his conclusions some guiding principles for an eventual peace settlement in the Far East. These are neither significant nor helpful.—A. VANDENBOSCH.

#### INTERNATIONAL LAW AND RELATIONS

In his timely treatise on *International Law and American Treatment of Alien Enemy Property* (American Council on Public Affairs, pp. xvi, 143, \$3.00), Dr. James A. Gathings surveys the subject from the days of the ancient Hebrews to the year 1940. He covers the development of the practice prior to the World War (with special attention to that of the United States), the treatment of alien enemy property in Europe during the World War, the policy and practice of the United States during the World War and subsequent years, a comparison of the World War practice of various states, and proposal for a future policy. While the book represents a useful summary of the subject, its scope resulted in some superficiality and prevented the author from producing a definitive study of the treatment accorded alien enemy property by the United States in the period since our entry into the World War. The forty pages devoted specifically to that subject necessarily fall considerably short of presenting the systematic and thoroughgoing analysis which is sorely needed. Dr. Gathings apparently adopts the view that both sequestration and confiscation of alien enemy property were forbidden by international law at the outbreak of the World War in 1914, although in some places he is guilty of a lack of precision in his use of the basic terms "seize," "sequesterate," and "confiscate." He concludes that "the rules of international law must be modified to permit a state to sequesterate private property of enemies or allies of enemies when it goes to war" (p. 124). Probably few, if any, states would concede the existence of any limitation on their right to assert control over alien enemy property within their territory at the outbreak of war. In his Introduction, Professor Borchard, in his usual forthright and candid manner, succinctly outlines the salient problems arising from the seizure and retention of alien enemy property, particularly German property, by the government of the United States.—DURWARD V. SANDIFER.

In *The True Facts about the Expropriation of the Oil Companies' Properties in Mexico* (Mexico City: Government of Mexico, pp. viii, 270), the Mexican government has taken issue with the interpretation of the oil controversy found in the series of pamphlets published by the Standard Oil Company of New Jersey and in Donald Richberg's *The Mexican Oil Seizure*. The charge of illegality of the Mexican seizure is founded primarily on three grounds. First, such seizure was a violation of Mexican municipal law. Second, it was a violation of international law. And third, Mexico is unable to make just compensation for the properties seized. As to the first, it is said that the Mexican Supreme Court was correct in holding that under Mexican law the companies had no property rights in sub-surface oil. It is well established in United States as well as Mexican law that "due to the migratory nature of the oil this does not become the property of the surface owner until it is brought to the surface and reduced to actual possession" (p. 135). United States cases are cited in support of this principle. As to the contention that the seizures violated international law, the thesis of the rebuttal is that "no doctrine exists in the international order establishing any rule of universal acceptance which makes immediate payment (not even deferred) obligatory in cases of expropriation for reasons of public utility" (p. 197). While the fourth chapter seeks to prove Mexico's ability to give adequate compensation for the properties taken. A good statement of aliens' property rights under international law is found in Professor Josef L. Kunz's *The Mexican Expropriations* (New York University School of Law, pp. 64). After summarizing the international law relative to expropriation of the property of aliens generally, the author discusses the Mexican land and oil seizures. Having paraded much evidence, he concludes that "the arguments of Mexico are legally untenable" (p. 60).—WILLIAM M. GIBSON.

Declaring that post-war decades have constituted a "period of truce that was mainly an epoch of secret service," Richard W. Rowan, in his *Terror in Our Time; The Secret Service of Surprise Attack* (Longmans, Green and Co., pp. 10, 438, \$3.00) brings up to date his authoritative and fascinating story of the rôle of *agents provocateurs*, propagandists, terrorists, saboteurs, and assassins in world politics. It is only natural that this phase of government activity has expanded greatly in recent years. Stalin and Mussolini were "graduate students" of revolution and conspiracy. Hitler was a spy. Fascism was dedicated to the proposition that force in itself is good. And so, since Versailles, thousands of secret service agents have been waging their underground, undeclared war of terrorism, not only acquiring important information for their governments, but weakening their potential enemies, paving the way for real war, and then playing an indispensable rôle in Blitzkreig activities. With this frame of reference, the au-



thor examines the world scene. Without revealing his sources, he discusses in a popular way the work of the GPU, the OVRA, the Gestapo, and the secret service systems of France and Britain. He introduces the reader to such master technicians as Djerzhinsky, Himmler, and Bocchini. Then he interprets numerous interesting incidents: the assassination of King Alexander; the Reichstag fire; the Italo-Abyssinian affair; civil war in Spain; the fall of Austria, Czechoslovakia, and Poland; intrigue in Palestine; purges in Russia; the Japanese invasion of China; the liquidation of Balboa and von Fritsch; the Munich fiasco; the Graf Spee incident, etc. In stressing the ruthless and terribly effective tactics of fascist agents, the book constitutes a scathing denunciation of fascist government. It is, moreover, a condemnation of the democracies for their failure to comprehend, while there was yet time, the significance of the information furnished them by their secret service operatives. Finally, it is a timely warning to the Western Hemisphere against invading hosts of spies, conspirators, agitators, and saboteurs, many of whom are already within our gates. The book should be read. The warning must be heeded.—FRANCIS O. WILCOX.

One of the results of the Study Meeting of the Institute of Pacific Relations held at Virginia Beach, Virginia, late in 1939 is *Problems of the Pacific* (International Secretariat, Institute of Pacific Relations, pp. 299, \$3.50), edited by Kate Mitchell and W. L. Holland. This meeting, unlike the previous conferences of the Institute, had a rather small group of participating individuals. Also, certain countries like the Soviet Union, the Netherlands, and Japan were not represented by any of their nationals. The British and French delegations were much smaller than those in former years. In spite of this reduction in the number of participants, the conference covered an extensive list of questions relating to the Far Eastern conflict. The present summary of the Virginia Beach discussions is introduced with a short chapter entitled "The Impact of the European War on the Far East." Since the conference met in the early months of the European War and the "blitzkrieg" was still the "sitzkrieg," the effect of the collapse of the French and Dutch empires was naturally not on the agenda. This has made the reading of some of the other chapters seem in places, without fault of the Institute of Pacific Relations, like "ancient" history. The editors of this summary have done a very careful piece of work in compiling in unified fashion a readable report. Being the first meeting of the Institute since the "incident" of 1937, much of the discussion is centered around the problem of Japanese aggression in China. Also presented are significant repercussions of this problem on third states such as Great Britain, the Soviet Union, the United States, etc. The final chapter deals mostly with the problems of political adjustment in the Far East, with few pages given to economic adjustment. This over-emphasis on po-

litical adjustment is compensated by the fact that the "documents" (which are really appended monographs) consider, in the main, economic matters precipitated by the Far Eastern conflict. Among these are William C. Johnstone's "The Sino-Japanese Conflict and American Rights and Interests in China", W. Y. Lin's "The Future of Foreign Investments in China," and F. M. Van Asbeck's "The Foreign Relations of the Netherlands Indies." *Problems of the Pacific* concludes with numerous appendices which give lists of personnel, documents presented, programs, *syllabi*, and recent and forthcoming publications of the Institute. Some of the latter have been reviewed in these pages. In these publications, the Institute of Pacific Relations has presented the results of the most comprehensive research project so far set up in relation to the Far East.—WILLIAM BALLIS.

Written without documentation for a public assumed to be familiar with the general history of the Far East since 1842, Nathaniel Peffer's *Prerequisites to Peace in the Far East* (Inquiry Series, International Secretariat, Institute of Pacific Relations, pp. ix, 121, \$1.00) is a competent analysis, from what might be called the strictly Western viewpoint, of certain of the causes underlying the present conflict in the Far East, and of conditions prerequisite to the establishment of a durable peace in that area. His general thesis is simple: that most of the troubles which have beset the Far East have been due to the impact of Western capitalistic imperialism, which Japan has accepted and put on like an outer garment, but which China has merely had imposed upon her; and that these troubles can be dissipated by the withdrawal from the Far East of political and economic controls now exercised by Western nations, and by permitting and aiding Japan and China to industrialize as rapidly as possible, without fear of each other or of Western powers. The reader is left to wonder where are those other forces which many believe have been equally important in the making of the elements of conflict in the Far East—some of which, such as the underlying conflict between the Chinese concept of the rule of reason as over against the Japanese idea of Bushido, or the way of force, have made for group attitudes, beliefs, and hostilities that no mere economic adjustments can cure. One has the feeling that Peffer, in justice to the scope of his subject, should have gone farther. Nevertheless, his thesis is ably, even brilliantly, developed. It is adequately oriented both to the past history and current scene of the Far Eastern conflict, and to the even greater conflict concurrently proceeding in Europe. It merits careful and respectful reading.—ERNEST B. PRICE.

The recent appointment of Viscount Halifax, K.G., as the ambassador of Great Britain to the United States makes the former Foreign Secretary's *Speeches on Foreign Policy, 1934-1939* (Oxford University Press,

pp. x, 368, \$4.00) of special interest to American readers. For these fifty speeches, many of them official parliamentary statements, include all of the Viscount's major speeches on foreign policy during the five-year period that preceded the present war. The collection has been carefully edited by H. H. E. Craster and was published under the auspices of the Royal Institute of International Affairs. Prefatory notes to each speech explain the circumstances under which it was given and place it in proper historical perspective. The collection offers an unusually good medium through which to trace the development of Viscount Halifax's thought on foreign affairs and through him that of the Conservative party of which he is an outstanding representative. To the degree that one believes that past performance is indicative of ability to interpret present and future events, the speeches also offer a guide as to how far Viscount Halifax's judgment can be trusted today. It is certain that he was a very long time discovering the implications of the fascist revolution in Europe. His speeches are, in fact, clearly representative of that section of Conservative leadership which promoted appeasement and placed its faith in the defense of special British interests by a balance of power rather than by effective support of collective methods of security. No one can doubt that Viscount Halifax is a conscientious and sincere supporter of democracy as he understands it. But many who read his speeches on such subjects as the Hoare-Laval Pact, Spain, or the Munich crisis will hold quite different ideas as to the meaning of the terms democracy and good faith.—WINCHESTER H. HEICHER.

*The American Impact on Great Britain, 1898-1914* (University of Pennsylvania Press, pp. ix, 439, \$4.00), by Richard H. Heindel, is properly labelled "A Study of the United States in World History." It is based upon extended periods of study in Great Britain, during which the author talked with thousands of people, in addition to amassing an unusual amount of written data. The truly numerous reactions to things American thus collected are woven into fifteen chapters, some of which deal with politics, literature, and education. Several chapters describe the strains and surprises of our business competition, and the last two trace our influence upon British social and cultural history. Fresh sidelights are given upon almost every event in the history of the two pre-1914 decades. The book is not an easy one to digest, because of the very wealth of information it contains, but no one can read it without being certain that we affect other peoples as powerfully, and as variously, as they influence us. It is offered as a pioneer study in international history, in the hope that there will later be "similar works covering almost countless relationships."—D. F. FLEMING.

One of the gratifying characteristics of the series of studies entitled "The Relations of Canada and the United States," prepared under the di-

rection of the Carnegie Endowment for International Peace, is their definitiveness. This derives, no doubt, from the high standards exacted by James T. Shotwell, general editor, and his divisional editors, as well as from the fresh exploration of original sources by vigorous scholars. American political scientists will esteem the two most recent studies for the sharper illumination they cast upon the late colonial and early national periods. In *The Diplomatic History of the Canadian Boundary, 1749-1763* (Yale University Press, pp. xiv, 172, \$2.50), Max Savelle, of Stanford University, has drawn almost exclusively upon manuscript sources found in French, British, Canadian, and American archives. Printed sources of primary and secondary character are given in an extensive bibliography (pp. 156-164). The author draws attention to the sociological conflict behind the boundary disputes and its significance to the future United States and Canada (pp. xiii-xiv). In *The United States, Great Britain, and British North America from the Revolution to the Establishment of Peace after the War of 1812* (Yale University Press, pp. xv, 448, \$3.25), Professor A. L. Burt "continues the history which he opened up in his other comprehensive volume," *The Old Province of Quebec* (1933). New materials and new interpretations contribute to the value of this vivid study. A bright style and subtle humor distinguish it. Helpful maps appear at appropriate places in both new volumes.—HENRY REIFF.

Canada's importance to the future of All-American relations makes any study of that country a welcome addition to the meagre literature which we possess about it. We have been accustomed to think of Canada in terms of her ties to Europe. We are dimly becoming aware of Canada's ties to the American continent. But A. R. M. Lower's *Canada and the Far East—1940* (International Secretariat, Institute of Pacific Relations, pp. 152, \$1.25) presents a new challenge by revealing the ties of our northern neighbor to the Orient. Like the United States, Canada's interest in Asia is largely the interest of her west coast provinces because of their export trade, because of their missionaries, and because of an unpopular influx of Japanese immigrants to that area. Sentiment in Canada, like sentiment in the United States, is unofficially pro-Chinese but officially courteous toward Japan. Canada, too, is torn between her defense obligations to England and her fear of Japanese aggression at her back door. The author concludes that while Canada's policy is likely to parallel ours in the Far East, it will probably never be to her best national interest, as it might be to ours, to go to war in the Orient. This book is apparently a pioneer in its subject-matter.—FRANCES REINHOLD FUSSELL.

Having completed the series of documents relating to Latin America, the *Diplomatic Correspondence of the United States* enters a new field with

the publication of the first of four volumes on *Canadian Relations, 1784-1860* (Washington, Carnegie Endowment for International Peace, Vol. I, 1784-1820. Documents 1-661, pp. xlvii, 947, \$5.00). The documents begin with an interchange of correspondence regarding a commercial treaty and end with items relating to the Rush-Bagot Convention. In the early period, many of the documents are concerned with the American effort to get the British out of the frontier posts; others relate to the perennial problem of the boundary from the elusive St. Croix to the mythical source of the Mississippi. Here, too, are items relating to Indian depredations in the Northwest, to English and Canadian concern over Louisiana, to the Treaty of Ghent, and to the post-war boundary adjustments. Dr. Manning's task of selection has been onerous, but he has brought to it the same high devotion to scholarship that has characterized the fifteen volumes in the two preceding series of this monumental work.—W. B. HESSELTINE.

The Geneva Research Centre has issued, as the first of a series dealing with problems of the future peace settlement, a brief study by Maurice Bourquin entitled *Dynamism and the Machinery of International Institutions* (*Geneva Studies*, xi, no. 5, pp. 62, \$0.40). It is a dispassionate, carefully-argued evaluation of the international machinery developed in the past twenty years for the settlement of disputes and the promotion of international coöperation. But whether pro-League, Federal Unionist, or isolationist, the reader will probably not find all of Professor Bourquin's suggestions equally acceptable. Be that as it may, the author, out of his long connection with the League as Belgian representative, individual expert, and professor, has distilled some strong criticisms and some constructive proposals. These proposals may be summed up in the sentence "... a collective diplomacy should be added to bilateral diplomacy." But the substance of what the author has to say cannot be given here without doing violence to it, an injustice to the author, and a disservice to the reader.—JAMES T. WATKINS.

In her *Far Eastern Trade of the United States* (International Secretariat, Institute of Pacific Relations, pp. xii, 116, \$1.00), Ethel B. Dietrich continues the Inquiry Series of the Institute. This study of the trade between the United States and Japan, China, Malaya and the Netherlands Indies, and the Philippines is in the form of a brief summary, valuable to both student and casual reader. Numerous tables are presented and carefully analyzed, showing the trends of the last decade as far as the major commodities of trans-Pacific trade are concerned. This emphasis on contemporary matters makes the study more valuable than more extensive works, for recent events tell more than long-time trends. No fixed point of view is

presented, but many possible courses of action are suggested, all of which have value. There are a few minor typographical errors. Miss Dietrich deserves much credit for having digested a great deal of material in order to put it in a form valuable to the busy reader.—ANDREW E. NUQUIST.

## POLITICAL THEORY AND MISCELLANEOUS

Like its predecessors, the 1941 (sixth) issue of the *Social Work Year Book* (Russell Sage Foundation, pp. 793, \$3.25), edited by Russell H. Kurtz, is a concise encyclopedia of organized activities in social work and related fields. The book contains two major sections. Part I comprises eighty-three articles signed by authorities on the topics discussed. For example, the article on public welfare is written by Fred K. Hoehler, director, American Public Welfare Association; the one on medical care by Dr. I. S. Falk, director, Bureau of Research and Statistics, Social Security Board; that on labor legislation and administration by John B. Andrews, secretary, American Association for Labor Legislation; that on juvenile courts by Frances H. Hiller, field director, National Probation Association; and that on social work as a profession by Arlien Johnson, dean, Graduate School of Social Work, University of Southern California. These topical articles are descriptive of functions and programs rather than of individual agencies. Important developments since the 1939 *Year Book* was published have been emphasized. Each article is concluded by a list of selected references. Part II is a directory of national and state agencies, both governmental and voluntary, the programs of which are related to the subject-matter of Part I. There is also an introduction, and an extensive index. In the ten years since the appearance of the first *Social Work Year Book*, there have been many shifts in social work function and organization. Today the most important agencies are governmental rather than private and voluntary. Public works agencies, employment and social insurance services, specialized forms of aid for various classes of the handicapped, have all been set up with federal and state funds, and have become an established part of American culture. Although private agencies have relinquished many services to public agencies, they remain an important factor in social work and will continue to pioneer in new fields. What effect current preparedness and defense programs will have on the old and more recent services, and what new services will be needed, no one at present can predict. The next *Social Work Year Book* will undoubtedly record many important changes in social work organization. The *Social Work Year Book, 1941*, affords a reliable and comprehensive source of information on all aspects of social work today. All libraries should make it available for social workers, for high school and college students of the social sciences, and for the "ordinary citizen" who often wants and needs accurate material on the subjects covered.—HELEN I. CLARKE.

With the publication of Donald L. Kemmerer's *Path to Freedom; The Struggle for Self-Government in Colonial New Jersey, 1703-1776* (Princeton History of New Jersey, Vol. III, Princeton University Press, pp. xvi, 384, \$3.75), and of Leonard Lundin's *Cockpit of the Revolution; The War for Independence in New Jersey* (Princeton History of New Jersey, Vol. II, Princeton University Press, pp. xviii, 463, \$3.75), the colonial history of New Jersey has received at last an adequate, readable, and scholarly treatment. Mr. Kemmerer tells effectively the story of the conflict between the royal governor, acting with the council, and the elected house. This conflict, which continued for more than seventy years, revolved around such issues as money bills, executive salaries, control of expenditures, the paper currency, the suffrage franchise, representation, triennial acts, governors' instructions, officers' fees, and the tenure of judges. The elected house added steadily to its privileges and gained such a position of strength and so much popular support that its adherents successfully took up arms when Britain sought to curb its powers after 1763. Mr. Kemmerer has enlivened the frequently dreary squabbles over political privileges with interesting sketches of the leading actors in the story. Behind the conflicts appear the interests of debtors and small farmers in opposition to merchant creditors and to the proprietors of New Jersey. Mr. Lundin, treating a shorter period, has had more space for a more diversified survey. He first sketches the social, economic, and political life of the province in the 1770's, presenting in chapters 1-3 a description of the colony that is vivid, compact, and pointed. In this discussion are revealed the social and economic forces that divided the people of New Jersey into loyalist and patriot groups. The remainder of the book, devoted chiefly to the military campaigns of the Revolutionary War, will interest most readers for the light it throws upon the impact of war on civil society. Chapter 8, on the state government in wartime, shows the triumph of those democratic principles for which the elected house had been contending since 1703. These two volumes supplement each other well and together make a much-needed contribution to American history.—C. P. NETTELS.

In *Edward Livingston: Jeffersonian Republican and Jacksonian Democrat* (Louisiana State University Press, pp. x, 518, \$3.50), William B. Hatcher has written the first full-length study of this notable American political leader since the appearance of Charles H. Hunt's biography nearly four-score years ago. This is a volume in the Southern Biography Series. It is a carefully documented work based on an exhaustive exploration of available manuscript and printed sources. Particularly good use was made of public records. Special pains were taken to gather the evidence relating to Livingston's accounts in the settlement of his indebtedness to the Federal Treasury, the Batture controversy, the preparation of

the civil and other codes for Louisiana, and the drafting of Jackson's proclamation denouncing nullification. Livingston's life was filled with dramatic incident. Of patrician ancestry, he became allied through a shift in family political allegiance with the cause of Jeffersonianism, achieved prominence as a congressman from New York, then as mayor of the same city at the age of thirty-seven, and simultaneously as federal district attorney. Forced to relinquish his city and federal posts because of a shortage in the accounts cared for by a political appointee in the attorney's office, Livingston left for New Orleans in 1803 to begin life anew. Here again his rise was swift and colorful. From the Louisiana legislature he went to the House of Representatives, and then to the Senate, resigning to become Secretary of State, and subsequently minister to France. His lucrative and varied legal practice, his rôle in New Orleans Creole society, his success in winning over the Laffites to the American side on the eve of the British attack on New Orleans, his friendship with Jackson, his relations with Burr, his clash with Jefferson, his interest in social and penal reform, his part in the United States Bank controversy, his efforts to bring Webster into the Jacksonian fold, his diplomatic maneuvers at the court of Louis Philippe—all bear witness to the nature of his many-sided public career. Of his personal life, there is much that lends itself to vivid biography. However, the author has contented himself with telling the story without any striving for literary effect. He has painstakingly organized all the material he could find on Livingston and presented it with clarity and dispassionate objectivity.—SIDNEY I. POMERANTZ.

*The City of Man; A Declaration on World Democracy* (New York: The Viking Press, pp. 113, \$1.00). Issued by Herbert Agar, Frank Aydelotte, G. A. Borgese, Hermann Broch, Van Wyck Brooks, Ada L. Comstock, William Yandell Elliott, Dorothy Canfield Fisher, Christian Gauss, Oscar Jászi, Alvin Johnson, Hans Kohn, Thomas Mann, Lewis Mumford, William Allan Neilson, Reinhold Niebuhr, Gaetano Salvemini. "A new foundation then must be laid for a new democracy—in the firm rock of conviction, deep below the moving sand of opinion. And the concept of a vital democracy must be dissociated from the notion of a disintegrated liberalism. . . ." Thus do the distinguished authors of the *City of Man* give us the key to this all-important book. The last clarion call of democracy was sounded so long ago that democracy was precipitated into the present mortal combat lacking an articulate philosophy and program at once fundamental, reasonable, inspiring, practical, and timely. Twentieth-century democracy, however, is now becoming articulate, and among the restatements of the creed *The City of Man* is, in the opinion of the reviewer, the most compelling and most complete. An analysis of this declaration of total and world democracy is impossible here. So important is every word,



also, that one hesitates to offer a short cut. With some details one may find one's self not in complete agreement. One is not surprised that the part dealing with civil liberties should be a shade less convincing than the rest, when one considers the almost insuperable difficulties of this problem. The book will take its place among the outstanding pronouncements of this age, and should be universally read, especially in the United States, upon which, its authors rightly declare, the burden of its fulfillment must eventually rest. "For here," they remind us, "and almost nowhere else, is man granted the right and duty of being Christian and human."—ELLEN DEBORAH ELLIS.

It is not often that the methods of literary history come consciously to the assistance of political science. But such is the case with Paul Merrill Spurlin's *Montesquieu in America, 1760-1801* (Louisiana State University Press, pp. xii, 302, \$3.00). The volume is impressive in the exhaustive use of contemporary sources, and to the author the student of American political ideas should acknowledge a debt. Spurlin believes that the truth about the influence of Montesquieu must be found between those who assert his great impress on American affairs and those who sharply deny his influence on our early thought (p. 34). This volume follows the American fortunes of Montesquieu through the last pre-Revolutionary years, through the Revolution, the formation of state and national constitutions, and into the era of Federalist and Anti-Federalist political controversy. The secret of Montesquieu's influence was rooted in the fact that he explained to Americans in a concise way the British constitution under which they lived (p. 260). But from being an expositor of the British constitution and the principle of the separation of governmental powers he became gradually an expounder of political values on numerous other subjects. On the basis of Spurlin's data, it will be difficult to deny the influence of French ideas upon the course of politics in the United States.—FRANCIS G. WILSON.

The problems of power relationships, leadership, rule-making, and responsibility, as found in large industrial corporations, are analyzed by Marshall E. Dimock and Howard K. Hyde in a report prepared for the Temporary National Economic Committee and printed under the heading, *Monograph No. 11: Bureaucracy and Trusteeship in Large Corporations* (U. S. Government Printing Office, pp. 144). The report is in four parts, dealing respectively with "The Nature and Scope of Big Business," "Causes and Manifestations of Bureaucracy," "Managerial Correctives of Bureaucracy," and "The Implications of Trusteeship." The authors find that large business organizations reveal virtually the same tendencies as large governmental organizations with respect to centralization of control, preoccupation with inner rules and procedures, and incentive for employ-

ees. Trusteeship is found more a theory than a fact, and the report stresses the necessity of devising methods for enforcing managerial responsibility. The authors recommend advice and publicity. In the opinion of the reviewer, the experience of corporate management control, as surveyed in this report, demonstrates the need for somewhat more compelling measures.—HUGH L. ELSBREE.

In *Lazare Carnot, Republican Patriot* (Oxford, O.: Mississippi Valley Press, pp. viii, 393, \$4.50), Huntley Dupre has given us a full-length biography of the famous revolutionary figure that shows a careful combing of the sources and a painstaking attempt to present in a pleasing manner the known facts. In spite of these efforts, the result is somewhat disappointing. The author somehow fails to give one an insight into the personality of his subject. Carnot does not seem to live again in these pages. Unless the reader already knew the reputation of Carnot, he might close the book without a vivid realization that Carnot gained immortality as the organizer of victory. He would get little conception of the qualities of Carnot as an administrator. It is highly probably, however, that these faults of an otherwise honest and sound piece of work are due, not to the author, but to the nature of his sources.—C. P. HIGBY.

*Nature and Functions of Authority* (Milwaukee: Marquette University Press, pp. 78), by Yves R. Simon, is a study of the significance and the justification of authority in terms of philosophy. Drawing largely on St. Thomas Aquinas, the author declares that, "considered in its essential function, as identical with the prudence of society in its collective action, authority is the everlastingly good principle of the social unity in the pursuit of the common good." The exercise of authority is justified "wherever the welfare of the community requires a common action"; but it must find its limit "wherever a task can be satisfactorily achieved by the initiative of the individual or that of small social units"—on which basis totalitarianism is condemned. Thus by the spirit of St. Thomas, which illumines every page, is light shed on the contemporary scene. And reading, one recognizes anew the ageless genius of this greatest of mediaeval philosophers.—ELLEN DEBORAH ELLIS.

A new edition of J. Franklin Jameson's *The American Revolution Considered as a Social Movement* (pp. 100, \$1.75) has been published by the Princeton University Press. Consisting of four lectures published originally in 1926, the volume points the way to further studies in a neglected aspect of the Revolution.—W. REED WEST.

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

CLYDE F. SNIDER

*University of Illinois*

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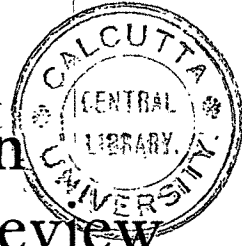
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## THE LEGAL AND POLITICAL PHILOSOPHY OF LEONARD NELSON<sup>1</sup>

LEVI D. GRESH

*Pittsburgh, Pennsylvania*

### I. IMPLICATIONS FOR JURISPRUDENCE

The legal philosophy of Nelson is fundamentally a liberal doctrine. It is, on the one hand, opposed to the philosophy which places a supreme trust in human reason and which believes that man can sit down and codify a system of laws in which there will be no gaps; and, on the other, it is opposed to a belief in the necessary rationality of existing institutions in the onward sweep of human history, the idea which was so dear to the Historical School of jurisprudence.

Nelson is a *Naturrechtlehrer* in the sense that he believes in the existence of metajuristic criteria of justice. That there are elemental principles of justice which are universal, and according to which laws are either just or unjust, decisions either right or wrong, Nelson believes cannot be denied. The moment we admit the injustice of a statute, or a judicial decision, we admit that we have used a criterion on which to base our opinion. The mistake we make, however, is to suppose that we can discover criteria, either empirically or logically. They are judgments of what we think ought to be (*Sollensurteilen*); and we arrive at them, in the last analysis, on the basis of what Nelson calls *Anschauung*,<sup>2</sup> which depends upon our whole philosophy of life as fashioned by our social-economic and

<sup>1</sup> Leonard Nelson succeeded Joseph Kohler as professor of public law at Berlin in 1910. Here is a true Kantian, who in the midst of the World War had the courage to write *Die Rechtswissenschaft ohne Recht*, and who founded a school of jurisprudence which did not go over to the philosophy of Helmuth Nicolai and the "Hitler Code" Commission.

<sup>2</sup> Nelson, *Über die sogenannte Erkenntnisproblem* (Göttingen, 1908), S. 464.



cultural background.<sup>3</sup> Their origin is necessarily vague (*ursprünglich dunkel*), but it is nevertheless the only positive source; and, though subjective in their foundation, such criteria may be used as an objective measure of validity and justice.

Nelson's fundamental legal norm, the *Rechtsgesetz*, or "law of laws," proceeds from his concept of law as such. His concept of law is not derived from the ideas concerning man in a "state of nature" (*Naturzustand*), as that term was understood in the natural-law theories of the *Aufklärung* period. Instead, Nelson's concept of law is derived from the ideas concerning man in a legal state (*ein rechtlicher Zustand*). The chief characteristic of law is its absolute necessity. Law is "natural" in the sense that it is necessary. Law and coercive government are not necessary because of man's depraved nature, but because he is a reasonable being (*einvernünftiges Wesen*), and, as a reasonable being, is interested in his right to self-improvement (*Selbstbildung*) and self-determination (*Selbstbestimmung*). This right can be secured only in a legally regulated society; and it follows that the really "natural state" of man is a legal state.

It will be seen, therefore, that the impossibility of proving the existence and validity of a fundamental legal norm, either logically or empirically, does not concern Nelson at all. The existence and necessity of law is assumed as an axiom; and the criterion of its validity is to be drawn from the purpose or goal (*Endziel*) for which it exists. The science of law becomes, to a great extent, a sociological interpretation.

Nelson's fundamental legal norm, the *Rechtsgesetz*, postulates a social duty for the statesman, law-giver, and judge; and it commands that their acts be commensurate with such duty. Since this postulate holds good, regardless of time, place, or occasion, it constitutes a universal law, and is therefore a *Naturrechtssatz*. It, however, is not a Kodex of unchangeable law; it implies, in fact, the very opposite idea. Only the form of this fundamental "law of laws" is universal. In the application of its content (*Inhalt*), namely, "the principle of personal equality," all qualities of immutability cease to exist, inasmuch as this principle implies the positive limitation of individual freedom in order that the equal right of every person to self-determination be secured. Here is where positive law and coercive government come into the service of *Naturrecht*; and

<sup>3</sup> "Die Richtigkeit einer rechtlichen Entscheidung hängt von der Bildung des Urteilenden ab." Nelson, *Theorie D. wahr. Interesses*, S. 409.

their fundamental purpose is to make secure this equal right to self-development. Limitation is the keynote. It therefore follows that, under certain conditions, more freedom may be allowed to individuals than under others, and the right of self-determination still be preserved. A *laissez-faire* policy may have been right under one set of conditions; it may not have interfered with the equal right to self-development at all; in fact, it may have been synonymous with such right. Under a new set of social-economic conditions, however, the policy may be all wrong. Limitation may now be needed; again, that the right to self-determination may be secured. Always *Gleichheit*, in the sense just described, and not an absolute *Freiheit*, is the watchword in Nelson's legal philosophy.

Another feature of that legal philosophy is the high regard it entertains for positive law. If natural law postulates the necessity of limitation of individual freedom so that the equal right of individuals to self-development may abide, positive law is absolutely necessary; otherwise, Nelson realizes that his *Naturrechtssatz* would be meaningless.<sup>4</sup> Men cannot be forced to be ethical. Morality is concerned with the relation of the will of the individual to his action. Man's action must be voluntary to be ethical; but it need not be voluntary to be legal. He can be compelled to render at least outward obedience. This is all that the *Rechtsgesetz* requires, and all that the "principle of personal equality" requires.

Force is necessary to give law its objectivity, to give it results; and Nelson is tremendously interested in results. His social ideal of a legally regulated society must be established. This does not negate the fact that law is always law, in and of itself (*an und für sich*); but, because the *Rechtsgesetz* is not a categorical imperative, and because individuals do not voluntarily (*von sich aus*) limit themselves, Nelson realizes clearly that the very purpose for which his fundamental legal postulate stands will be absolutely meaningless unless positive law, backed up by the force of the state, gives it meaning. Nelson is not afraid of force, as we shall see later when we come to the implications of his philosophy for political theory. His doctrine is that, given a consciousness of the essence and purpose of law, as expressed in his "principle of personal equality," those in authority must be allowed to use all force necessary to bring about the desired end.<sup>5</sup> It is not coercion that Nelson fears,

<sup>4</sup> Nelson, *System der Philosophischen Rechtslehre und Politik* (Leipzig, 1924), S. 115.

it is arbitrary will; and only law consciousness on the part of those in authority will prevent the abuse of authority. There would be force even in anarchy, says Nelson. Therefore, it is infinitely better to have force and legal regulation, even if the attendant danger of abuse of authority necessarily exists.

Another principle of the legal philosophy of Nelson, and one that is often misinterpreted because it is not construed in the light of his essential concept of law, is that of the recognizability of law. To be valid law, it must be able to be recognized (*anerkennt*) as valid law. Two important points must be stressed in this connection. In the first place, the fact that it is so recognized by the people does not make it valid law, and, *mutatis mutandis*, the fact that it is not recognized by the people as valid law does not mean that it is not valid.<sup>5</sup> The real implication of this principle of recognizability is clear only if both possibilities are taken into account. To take an illustration from American public law: Let the question be raised, Was the Eighteenth Amendment valid law? Nelson's answer would be: The Eighteenth Amendment was valid law if it was necessary to secure the equal right of reasonable beings to self-determination. To determine whether or not it was so necessary, Nelson would apply his so-called method of "weighing the interests." If the Amendment had this quality of recognizability (and it is the judge's business to decide whether it did so), then it was valid law, regardless of whether it was accepted as such.

What does Nelson mean by "weighing the interests"? The principle finds its expression concretely when the referee or judge, who is doing the "weighing" of two conflicting interests, completely ignores the individuals whose interests conflict and combines the two conflicting interests in his own person, making his decision on the basis of the interest which he himself has in the object (*Gegenstand*) of law as a whole. The judge is particularly interested in the existence of *ein rechtlicher Zustand* in which the right of every individual to reasonable self-determination is secured, and so is each of the two individuals whose interests are in conflict. They, however, cannot objectively decide the issue; and it, therefore, remains for the judge to proceed according to the method just mentioned.

<sup>5</sup> This is by no means the same justification of force as that found in the *Machtphilosophie* of the Neo-Hegelian Fritz Berolzheimer, for example. It is not force justified by a *Geistsgeschichte* philosophy; it is force justified and sanctioned by "natural law" itself.

<sup>6</sup> Nelson, *Kritik der praktischen Vernunft* (Leipzig, 1917), S. 162.

As already stated, Nelson is quite willing to admit that the referee's viewpoint will rest on a more or less subjective basis; but, if the latter is fully conscious of the object of law as such, his decision will make for *ein rechtlicher Zustand*.

The question remains to be asked: Has Nelson completed the building which Radbruch claims Stammler "left unfinished"? Do Nelson's postulates, as Gysin says of those of Fries and Stammler, still remain only postulates?<sup>7</sup> Has Nelson broken through the dualism which Breuer claims runs through the whole of the Stammlerian system;<sup>8</sup> and has he, therefore, bridged the gap between the purely formal part of his legal philosophy and the facts of social life? Certainly this is the question on the answer to which every philosophic legal system must be judged.

After carefully examining Nelson's different types of cases in which individual interests come into conflict, and the procedure by which he applies the content of his fundamental legal norm (*das Rechtsgesetzesinhalt*) to their settlement, one is inevitably forced to the conclusion that Nelson has gone far beyond any of his Neo-Kantian predecessors in the application of standards of legal justice to the solution of actual problems of jurisprudence. Professor Pound has styled Kohler's so-called Neo-Hegelian legal philosophy an "engineering interpretation," thereby implying its applicability to actual problems of law. Subjective as may be the basis of Nelson's fundamental formal norm (*Rechtsgesetz*), its content, as expressed in his "principle of personal equality," would seem to have every whit as much basis in the empirical facts of social life as does Kohler's general thesis of *Kulturrechtsgeschichte*. Nelson, undoubtedly, has a philosophy of law. Whether he has an answer, which may or may not satisfy all types of situations, may be seen in the many examples in which he shows the application of his criterion to such cases. Granting the subjective basis of Nelson's assumption that law is a necessary limitation (*Beschränkung*) of individual freedom, it is certainly difficult to see how Kohler's assumption of *Kulturperioden*, as well as the function he assigns to law in the realization of the goal of his *Kulturgeschichte*, are any less subjective. It is still more difficult to see how his criteria are

<sup>7</sup> Gustav Radbruch, *Rechtsphilosophie* (Leipzig, 1933), S. 15.

<sup>8</sup> Arnold Gysin, *Die Lehre vom Naturrecht bei Leonard Nelson* (Berlin-Grünwald, 1924), S. 34-38.

<sup>9</sup> Isaac Breuer, *Der Rechtsbegriff auf Grundlage der Stammlerschen Rechtsphilosophie* (Berlin, 1912), S. 93.

any more applicable to actual problems than are those of Nelson.

Nelson's concept of the purpose of law is a universal concept. This universality once established, it becomes clear that Nelson's idea of law is not based on a *Rechtsgefühlpsychologie* growing out of a race (*Rasse*), or a Kultur theory. With such ideas as those of the "Hitler Code" Commission,<sup>10</sup> Nelson's legal philosophy has no patience. They lack all the necessary elements of universality. They constitute a "thinking with the blood" philosophy. That they are extremely dangerous is seen just as clearly by certain Neo-Hegelians<sup>11</sup> as by true Neo-Kantians. *Rechtsphilosophie* must, after all, be entitled to the name *Philosophie*; and it is extremely difficult to find a theory which assigns a higher place to this discipline than does the legal theory of Leonard Nelson.

## II. POLITICAL IMPLICATIONS OF NELSON'S THEORY

The general opinion that the Neo-Kantians, as opposed to the Neo-Hegelians, minimize the importance of the state to a point where it ceases to have practically any meaning needs considerable modification in the case of Nelson. The legal and political philosophy of Nelson must always be considered as a whole. It is only then that it is safe to venture an interpretation of any of his ideas as applied to the common political and legal institutions of men. If this is done, the inconsistencies which appear in Kant as we proceed from the purely formal part of his philosophy to his more practical ideas, and which at first sight appear in Nelson, will disappear. Kant was, on the one hand, the Königsberg philosopher and, on the other, the professor in the Prussian state university; and even the Old Master had difficulty in reconciling these two positions. Nelson lived through the glorious days of the Empire: he saw the Weimar Republic established, and he lived to see a large part of the decline of German Social Democracy, and with it the institutions set up by the constitution of August 11, 1919. Kant shared with Hobbes one weakness, a psychological weakness—fear. Certainly, Nelson, who during the heyday of 1917 wrote with so much severity of the men responsible for what he called "*die internationale Anarchie*," cannot be said to have lacked courage.

It is significant indeed that the few criticisms which have ap-

<sup>10</sup> See Helmuth Nicolai, *Die rassengesetzliche Rechtslehre; Grundzüge der national-sozialistischen Rechtsphilosophie* (1932). Dr. Nicolai was chairman of the commission.

<sup>11</sup> Fritz Berolzheimer, *Die Gefahren einer Gefühlsjurisprudenz in der Gegenwart* (1911), *passim*.

peared in German political and legal literature (and to date, if we except a few references in more general works, none have appeared in English), are criticisms directed almost entirely at Nelson's epistemology. None accuse him of inconsistency,<sup>12</sup> although it is difficult to reconcile some of the scattered and inadequate statements that have appeared in one or two American works that give Nelson any mention at all.<sup>13</sup>

Nelson is a Neo-Kantian: and, as such, he believes in the existence of criteria whereby the validity of positive legal and political acts may be judged. The weakness of the epistemological basis of his general norms has been pointed out. He admits this without question.<sup>14</sup> The heart of the matter, however, does not lie here. The real question is: Does he bridge the gap between philosophical norms and the facts of social life?<sup>15</sup> It is submitted that he does in a far more satisfactory manner than any of his contemporaries, whether Neo-Kantian or Neo-Hegelian.

Nelson is a believer in natural law, in the sense just pointed out; but, unlike Kant, the theory of a "state of nature" (*Naturzustand*) has no significance for him. The ideas of social contract, and the obligation of contracts, as these ideas were drawn from the philosophy of man in a "state of nature," are to Nelson absolutely meaningless. The "state of nature" was not his starting point. Instead, his point of departure, as has several times been noted, was his concept of law as necessary limitation (*Beschränkung*) of individual freedom. "Natural law" is, therefore, "necessary"—necessary for the achievement of the only "natural" social condition in which reasonable beings can be conceived as enjoying an equal right to the opportunity of self-determination. In other words, Nelson's "state of nature" would be the very opposite of the traditional concept; it is a state of legal regulation.

The fact of the matter is that, far from absorbing the state in a

<sup>12</sup> Eric Kaufmann, the Neo-Hegelian arch-critic of Neo-Kantianism, does not mention Nelson at all, while Gustav Radbruch, the father of Relativism in legal philosophy, refers to Nelson thus: "Und das Vernunftrecht der Aufklärung feiert in Anlehnung an Kant und Fries seine Auferstehung in einem durch seine unentwegten Vernunftglauben eindrucks vollem System." *Rechtsphilosophie*, S. 26.

<sup>13</sup> See, for example, Rupert Emerson, *State and Sovereignty in Modern Germany* (Cambridge, 1930), pp. 180-181.

<sup>14</sup> Nelson, *Die Kritik der Praktischen Vernunft*, S. 362.

<sup>15</sup> Radbruch saw this when he pointed out that Stammeler's postulates, even though they might be basically sound epistemologically, were invalid as to their application to particular cases or problems.

system of legal norms,<sup>16</sup> Nelson's ideal state becomes a very real social condition with real factual content. He certainly gives it infinitely more comprehensible content than can possibly be drawn from Kohler's concept of *Kulturperioden*. It is a state of the legal limitation of individual freedom in order that the equal right of every individual to self-development may be secured. This is not absolute equality; it is personal equality only in this definitive and limited sense. This is the condition which it is the business of law and government to achieve; and for the assistance of such positive regulation, Nelson offers his yardstick (*Maßstab*) of the "true interest." Without understanding his concept of an ideal state as *ein rechtlicher Zustand* of society, or *eine Gesellschaft vernünftiger Menschen*, it is utterly impossible to understand either his legal or his political philosophy. Viewed in this sense, it is impossible to tell where Nelson's *formal* political and legal philosophy leaves off and his *material* part begins. It is a whole; and it is far from being merely a system of norms such as Kelsen's *reine Rechtslehre*.

Nelson's state is always the people and the government, coöperating in a legally regulated society; it merely becomes more "ideal" as such coöperation becomes more and more perfected and individuals become more and more law-conscious. This is the goal (*das Endziel*); and the very idea of a goal suggests at once the evolutionary element in Nelson's political philosophy. It is not something static; it is, in a very real sense, a growing organism, but an organism whose growth is controlled by a universal concept of law, not by the workings of the capricious spirit (*Geist*) of a particular people.

More ink has been spilled over the familiar concept of sovereignty than over any other concept in political and legal philosophy, unless it be the concept of the state itself; and in the treatment of the concept of sovereignty the Germans have certainly not been idle. It is fitting at this point that the implications of Nelson's philosophy in regard to this concept be considered. Here, too, Nelson has, for the most part, not received adequate attention. The reason for this, again, is the fact that his references to the subject of sovereignty are not interpreted in the light of his general philosophy. The key to his theory of sovereignty is to be found only in the principle that *Sollensätze* can never be derived from *Seinsur-*

<sup>16</sup> This is exactly what Hans Kelsen does when he reduces the state to a mere "Zurechnungspunkt," or imputation point.

teile. The principle of sovereignty is, according to Nelson, just as much a principle of what ought to be as is any other legal principle. This means nothing more nor less than that sovereignty, if it is to be legal in the Nelsonian sense, must account for a willingness on the part of those who obey the so-called sovereign authority; and sovereignty must never be "highest power"; it must always be "highest authority."

Unfortunately, as Nelson explains in his criticism of Jellinek, it is the bare analytical definition of sovereignty that has formed the starting point for most of the discussions on that subject. Definitions, according to Nelson, are merely analytical judgments of what exists (*Analytische Seinsurteile*); and as a criterion of the validity of a principle such as sovereignty they are absolutely futile.<sup>17</sup> As a contemporary American student of public law shows, a "working theory of sovereignty" must be one of legal sovereignty, if it is to have any meaning at all.<sup>18</sup> This is the philosophic foundation of Nelson's attack on the popular concept of sovereignty; and it is in this sense that the statement of a contemporary American student of German public law is at all accurate.<sup>19</sup>

Nelson's sovereignty is a sovereignty of law; and, if his concept of law as a necessary limitation of individual action is clear, then his theory of sovereignty begins to have real meaning. Law, if it is real law, says Nelson, exists, and has validity, in and of itself; but it has no objectivity, so far as human relations are concerned, until it has enlisted the aid of a power which is able to enforce it. This power does not create law; it has no sovereign rights, but only a sovereign duty—the duty of assisting in the realization of the end

<sup>17</sup> "Den eigentlichen Mittelpunkt dieser Lehre (Jellineks), um den sich alles übrige dreht, bildet die Erörterung des Begriffs der Souveranität. Diese Tatsache verdient schon an sich, nämlich unter methodischem Gesichtspunkt, unsere Aufmerksamkeit. Von irgen welcher Wichtigkeit für die Ergebnisse einer juristischen Untersuchung kann unmittelbar stets nur ein Rechtsatz niemals aber ein blosser Begriff sein. Aus einem Begriff folgen allemal nur leere logische Identitäten; um zu einer Behauptung von juristischen Inhalt zu gelangen, musz man von einer anderen Behauptung ausgehen, die sich ihrerseits nicht aus einem blossen Begriffe herausziehen lässt." Nelson, *Die Rechtswissenschaft ohne Recht*, S. 59.

<sup>18</sup> John Dickinson, "A Working Theory of Sovereignty," *Political Science Quarterly*, Vol. 42, No. 1; Vol. 43, No. 1.

<sup>19</sup> Says Emerson: "In the struggle against it [sovereignty] he [Kelsen] was joined by Leonard Nelson, who professed himself quite ready to see the concept banished wholly from the sphere of jurisprudence and political thought." *Op. cit.*, p. 179.



and purpose of law, the duty of establishing *ein rechtlicher Zustand* of society. Whatever acts this power performs are legal and valid, so long as they make for the achievement of the end and purpose for which law, by its very essence, exists.

This power, or *Zwingsorganisation*, which law calls into its service, is the government. That Nelson assigns to government a high responsibility must be quite clear; its duty is to give reality to the philosophical postulate of the absolute necessity of a legally regulated condition of society,<sup>20</sup> a condition necessary because man is a reasonable being with one permanent and true interest (*das wahre Interesse*)—the equal right to self-development according to his natural endowments. Nelson realizes, of course, that government may get out of hand, so far as the commands of his postulate are concerned. It may, in fact, become despotic. Nevertheless, since force is necessary to make law effective, this “highest power” cannot, and dare not, be politically limited.<sup>21</sup> There are no political guarantees against the abuse of power by the government, in Nelson’s system, save the moral check of the consciousness of law. If this sense of legal duty is lacking, government is based on will;<sup>22</sup> it has ceased to be a government of laws.

The theory of popular sovereignty enters Nelson’s system in connection with his principle that law, to be valid, must have the quality of acceptability. The idea here is, of course, that if a positive enactment makes for the end for which law exists, it is reasonable and will be so recognized (*anerkannt*) and accepted by reasonable beings. But individuals do not necessarily limit their own individual freedom; and here again the fundamental necessity (*Notwendigkeit*) of such limitation (*Beschränkung*), which compels law to call coercive government into its service to make itself effective, leaves to the government the power of deciding, in a conflict between the state and the individual citizen, whether or not specific positive enactments make for such necessary limitation and are just and valid. It must, therefore, be quite obvious that the familiar concept of “popular sovereignty” has little meaning in Nelson’s political and legal theory, if indeed, it has any real meaning in any.<sup>23</sup>

<sup>20</sup> Nelson, *System*, S. 175.

<sup>21</sup> Nelson, *ibid.*, S. 70.

<sup>22</sup> Nelson, *Die Rechtswissenschaft ohne Recht*, S. 105.

<sup>23</sup> It is a well-known fact that it is typical of German political and legal theory to insist that sovereignty must be placed definitely in an organ. It is conceded that Gierke’s *Genossenschaft* theory may be interpreted as being an exception.

The implications of Nelson's theory for the problem of the extent of governmental action must appear from what has preceded. The principle of equality (*Gleichheit*), in the sense of the equal right to self-determination, must prevail always; society must be a legally regulated condition for this reason. If, therefore, changes in social-economic conditions make inevitable the use of more governmental control, in order that every individual may enjoy his reasonable right to self-development and self-determination, such control is justified and valid. It must certainly be clear that this theory might lead to socialism of an extreme degree; it would, however, always be state socialism, never communism.

This leads us to consider briefly the implications of Nelson's legal and political philosophy for such concepts as democracy, socialism, and communism. The reference that has been made to Nelson's idea of "popular sovereignty" may have led to the inference that he does not favor democracy. To the particular form of state organization, Nelson is entirely indifferent, so long as law rules and positive enactments meet the criterion of the purpose or end for which law essentially exists—in other words, the criterion of reason. From this idea of the sovereignty of reasonable law, Nelson is led to his principle of leadership (*Führerschaftsprinzip*), the principle that only the wisest should rule,<sup>24</sup> as well as to his ideas on training for leadership,<sup>25</sup> and his ideas on education in general.<sup>26</sup> It is, however, not within the province of this study to go into an examination of Nelson's ideas on such matters as public opinion and education. Suffice it to state that Nelson has tremendous confidence in the value of public education as the means of, not only training leaders for the state, but also developing that spirit of law-consciousness, in the broadest sense of the term, a consciousness which will always act as a moral deterrent to any abuse of power by those in authority, as well as a moral force compelling individuals to a better coöperation with government in its fundamental duty.<sup>27</sup>

It must appear from the statements already made with reference to the extent of governmental function in Nelson's philosophy that socialism is no bugaboo for Nelson at all. The question must now

<sup>24</sup> Unfortunately, Nelson is not clear as to just how these are to be selected. Presumably, in the system of training for leadership, he suggests, they will naturally come to the fore.

<sup>25</sup> Nelson, *Demokratie und Führerschaft* (1920), S. 1-24.

<sup>26</sup> Nelson, *Erziehung und Führer* (1920), S. 1-32.

<sup>27</sup> Nelson, *Erziehung und Knechtsgeist* (1921), S. 1-57.

be raised: Does his *Prinzip der persönlichen Gleichheit*, even if it is not a positive rule for the determination of property, not necessitate a communistic determination of property relationships, or at least the public ownership of the means of production (*Produktionsmittel*)? The answer, according to Nelson, is that it does not. Nelson's *Rechtsideal* is the principle of personal equality, in the sense of every reasonable being's equal right to the opportunity of self-development and self-determination. Again, not individual freedom, but individual equality in the sense just mentioned, is the basis of Nelson's answer. Nelson takes the position that a reasonable being can develop and realize his true nature only through the use of things (*durch den Gebrauch von Sachen*).

There is, says Nelson, no natural right of private property, in the sense in which the philosophers of a "state of nature" spoke of it. But private property is necessary for the self-determination of the individual;<sup>28</sup> and communism, therefore, is irreconcilable with *das Prinzip der persönlichen Gleichheit*. The assumption that the right of private property is necessary for the complete self-determination of a reasonable being is, very significantly it would seem, closely connected by Nelson with the necessity of a positive limitation of individual freedom at the hands of the government; and the abolition of private property seems to Nelson to go hand in hand with the abolition of government—in other words, with anarchy.<sup>29</sup> The fundamental "natural law" principle, making necessary legal regulation to secure the individual's equal right to self-determination, therefore, rules out not only anarchy<sup>30</sup> but also the abolition of private property.

The preceding, then, are the main political implications of Nelson's philosophy. One fact, in conclusion, must appear clear, namely, the fact that Nelson is a true follower of Kant in one respect, and in one respect only, namely, in method. That the conclusions to which his fundamental postulate of law (*das Rechtsgesetz*) leads him are, for the most part, anything but Kantian,

<sup>28</sup> This is substantially the argument used by medieval philosophers following the revival of Aristotelian ethics and politics in Western Europe during the latter part of the twelfth century. It is, for example, essentially the argument of St. Thomas. <sup>29</sup> Nelson, *Die Kritik der praktischen Vernunft*, S. 642.

<sup>30</sup> Nelson argues that even under anarchy force would rule. Therefore, it is infinitely better to employ the regulation of individuals according to law, and thereby establish a social condition in which every one may enjoy his natural right to self-determination.

cannot be doubted. He has left the political implications of the natural law theories of the *Aufklärung* period far in the rear.

### III. IMPLICATIONS FOR INTERNATIONAL LAW AND RELATIONS

In the very midst of the World War, Nelson lamented the fact that international relations had developed into *internationale Anarchie*, and the science of international law into *eine Rechtswissenschaft ohne Recht*. Nelson's legal philosophy is indeed extremely significant for the solution of the international problems of today. As a follower of Kant, it was inevitable that the ideas of the author of *Zum ewigen Frieden* should have an influence on Nelson. It is submitted, however, that in the application of his theory to the international field, Nelson goes far beyond the comparatively mild suggestions of the Old Master.

Just as in his *Staatsrechtslehre*, so also in his *Völkerrechtslehre*, Nelson attacks what he calls the "golden calf" of sovereignty. His attack, however, as pointed out in the preceding section, is aimed at the bare, analytical concept of sovereignty. To have any juristic meaning at all, says Nelson, sovereignty cannot be a mere *Seinsurteil*; it must always be a *Sollensurteil*. Law alone is sovereign; and law implies, by its very essence, the idea of the limitation of the spheres of freedom, whether of individuals or of states. Every society, national or international, must have as its ideal a condition of legal regulation (*ein rechtlicher Zustand*) in which each individual, citizen or state, enjoys the equal right to self-determination (*Selbstbestimmung*) in proportion to its natural capacity (*Fähigkeit*). This is the fundamental natural law principle (*Naturrechtssatz*) which governs the validity of every positive human regulation. Without it, says Nelson, it is inconceivable that a society of reasonable beings can exist.

Law of this type is sovereign, according to Nelson; but while it exists and is valid in and of itself (*an und für sich*), it has no objective reality, so far as its end or purpose (*Endzweck*) is concerned, until it has enlisted force in its service. Just as, in the state, a government or *Zwangsorganisation* is called into the service of law, so likewise in the society of states a *Herrschermacht* must be set up, in order that the conflicting interest of individual states may be settled according to the "theory of the true interest" (*das wahre Interesse*), and the purpose of law be thus accomplished.

What is the nature of the international organization which Nel-

son would set up? His answer is that it is to have the nature of a *Staatenbund*, and not that of a *Bundesstaat*. It might seem, at first sight, that here Nelson is very mild indeed; but such is not the case when his concept of the former type of organization is clearly understood. He disagrees with Jellinek that a *Staatenbund* implies that there can be no central ruling power apart from that of the individual states;<sup>31</sup> and he criticizes Oppenheim for maintaining, on the one hand, that the concept of law is entirely different from that of force,<sup>32</sup> and, on the other, that in a *Staaten-gemeinschaft* there can be no force exercised by any central executive power.<sup>33</sup> Law is sovereign in the society of states, as well as in any individual state; and the international organization which speaks for this sovereign can and must be endowed with the power to use force upon the members of this society. Even the popular concept of state sovereignty will not be interfered with, unless it be conceived as the right of a state to do as it chooses. This right, of course, Nelson denies. It is contrary to the very idea of law,<sup>34</sup> and cannot be admitted as a juristic concept. As a matter of fact, sovereignty in the ordinary sense means nothing, says Nelson, once the state is not strong enough to do as it pleases. Its sovereignty, or its independence, can be guaranteed a state only by international law, with the power of an international government back of it. Its sovereignty, or independence, then becomes a juristic fact. Far from meaning the destruction of the independence of a state, the erection of an international political commonwealth would mean the guarantee of its independence,<sup>35</sup> so long as the "principle of equality" and the criterion of "the true interest" would justify its independence or self-determination (*Selbstbestimmung*).

<sup>31</sup> "Definiert man freilich den Staatenbund als eine Verbindung von Staaten, die die Souveranität der Gliedstaaten nicht mindert (Jellinek, *Allgemeine Staatslehre*, 762), so ist ein mit Herrschermacht versehener Staatenbund allerdings unmöglich. Die Möglichkeit einer mit eigener Herrschermacht versehenen Staatenverbindung, die doch kein Bundesstaat ist, lässt sich aber auch durch diese Definition nicht aus der Welt schaffen. Nelson, *Die Rechtswissenschaft ohne Recht* (Leipzig, 1917), S. 75.

<sup>32</sup> Nelson, *ibid.*, p. 107.

<sup>33</sup> "Um so sehr musz es Wunder nehmen, dass Oppenheim, obgleich alle seine Bestrebungen darauf gerichtet sind, seinen Lesern die Dringlichkeit einer die Zukunft des Völkerrechts sichernden Organisation der Staatengemeinschaft vor Augen zu führen, die Ausübung eines exekutorischen Zwanges von seiten einer Zentralgewalt in der Staatengemeinschaft in alle Ewigkeit ausgeschlossen lassen will." Nelson, *ibid.*, S. 108.

<sup>34</sup> Nelson, *ibid.*, S. 60.

<sup>35</sup> Nelson, *Die Rechtswissenschaft ohne Recht*, S. 113.

It is sometimes alleged, says Nelson with Liszt particularly in mind, that the *genossenschaftlicher Charakter* of international law renders impossible the establishment of a law binding upon the states in a *Staatengemeinschaft*, save as each state through its own will enforces it. This Nelson denies.<sup>36</sup> If international law is law at all, it implies a limitation on the freedom of each individual state in the society of states, regardless of whether it is recognized (*anerkennt*) by that state or not. Limitation of freedom is the very essence of law. The only requirement, so far as the acceptance of a law by any member state is concerned, is that such law have the quality of acceptability as valid law, i.e., that the law make for the establishment of the "principle of equality" among the states by securing to each state the right to enjoy an equal opportunity for self-determination and self-development, in proportion to its natural capacity. Moreover, the variation in the legal systems of the different states does not prove, according to Nelson, that any one of them is out of harmony with the "natural law" principle just mentioned. This *Naturrechtssatz* simply demands the setting up of a condition of legal regulation in which the right just mentioned is guaranteed; it is not a norm of unchangeable law. It postulates, in fact, the very opposite. Law must account for variation in time, place, and circumstance; and this is exactly what causes the existing variation in the different legal systems.

Nelson also attacks Liszt's argument that, even though a state is free to leave the *Völkerrechtsgemeinschaft*, since the latter is but a *Staatenverein*, it is bound to those agreements to which it voluntarily gave its consent while a member of the union. This is plain foolishness to Nelson. Certainly the state is bound, says he, but not because of any prior expression of its will. It exercised its own will again when it left the union, and by so doing it plainly expressed the fact that its will was not to be bound by any rule or regulation of the union.<sup>37</sup> Clearly Nelson shows the inconsistency of the theory

<sup>36</sup> "Der Schluss auf den genossenschaftlichen Charakter des Völkerrechts ist in der Tat nur eine Inkonzsequenz. Wäre wirklich mit der Verwerfung des herrschaftlichen Prinzips' (Unterwerfung unter einen fremden Willen) schon das Souveränitätsprinzip (Unbeschränktheit des eigenen Willen) gegeben, so würde folgerichtig nicht sowohl auf den genossenschaftlichen Charakter der Völkerrechtsgemeinschaft, als vielmehr auf die Nichtigkeit des angeblichen Völkerrechts, nämlich, auf die Unmöglichkeit einer rechtlichen Verbindung der Staaten zu schliessen sein." Nelson, *ibid.*, S. 92.

<sup>37</sup> "Etwas sein frühere Wille, sie zu befolgen, den er, wir sollen es voraussetzen, zur Zeit seines freiwilligen Eintritts in den Verein hatte? Aber wie kann sein früherer

that a state can be bound only by its own will, and the holdings just pointed out. Not the state's will is the *Verpflichtungsgrund* of the state; it is bound whether it wills or not. The basis of its obligation is the fact that every state is by nature entitled to an equal right to self-determination in accordance with its *Fähigkeit*. This postulates the absolute necessity of law, making this right secure. Therefore, law comes before the state, is above any state, and above any society of states; and the basis of the state's obligation, whether in or out of the union, is law, not its own particular will.

Huber takes the position that the principle of the equality of states means equality in representation in any international organization that may be set up. This view Nelson attacks. He agrees with Huber that actual (*tatsächliche*) and legal (*rechtliche*) equality are the same; but he does not see how Huber can come to the conclusion that, both in practice and theory, the principle of the equality of states is a positive public international law principle.<sup>38</sup> Nelson's *Prinzip der persönlichen Gleichheit* in international public law means nothing more than the equal right to self-determination in accordance with "the true interest." Because the representation of states in an international organization can have juristic meaning only in so far as it serves the preservation of the legal, not the actual, equality of states, it, according to Nelson, departs from its true meaning when it is turned into a bare principle of equal representation.<sup>39</sup>

The essence of law implies the necessity of limitation, that a condition may exist in which conflicting interests may be "weighed" according to their true worth—their worth from the viewpoint of the development of life as a whole (*das Wert am ganzen Leben*). Applied to international law, this principle means that the weight of an interest must be determined from the viewpoint of civilization itself. This leads Nelson to the conclusion that not even the right

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Wille zu Befolgung der Satzungen ihn binden, auch jetzt noch das gleiche zu wollen." Nelson, *ibid.*, S. 94.

<sup>38</sup> Professor Dickinson comes to the conclusion that present-day practice does not agree with Huber's claim. E. D. Dickinson, *The Equality of States in International Law* (1920), *passim*.

<sup>39</sup> "Während also die Vertretung der Staaten in den völkerrechtlichen Organisation ihren rechtlichen Sinn nur darin finden kann, dass sie der Sicherung der rechtlichen Gleichheit der Staaten dient, wird sie ihrer rechtlichen Bestimmung gerade entfremdet, wenn man das Prinzip der Gleichheit der Staaten zu einem bloßen Repräsentationsprinzip macht." Nelson, *ibid.*, S. 98.

to an ultimate decision where its own life interest is concerned can be reserved to the individual state. Because of the ultimate purpose of law, there can be no interest justifying the state's breach of law.<sup>40</sup> Not even its continued existence as a state can be such an interest, for it can have no interest apart from its members (citizens),<sup>41</sup> and for them, in other words, its discontinuance as a state will mean only a change in government.

The preceding are the main implications of Nelson's legal philosophy for international public law and international relations. As in the case of Nelson's political theory, his ideas here are extremely significant as a contribution to the possible solution of present-day international problems. Law is needed in order that states may live together in a *Weltgemeinschaft vernünftiger Wesen*. To gain objectivity, law must needs call into its service some sort of a *Zwangsorganisation*. Just how far Nelson would go here is difficult to state; but always law must prevail. This "force-organization" has no sovereign rights; it has only the sovereign duty of maintaining *ein rechtlicher Zustand* in the society of states. Nevertheless, to accomplish its function, it must be politically illimitable; and the only guarantee against a possible abuse of its authority is the moral force of law-consciousness. Its business is to decide between conflicting interests according to the principle of the "true interest" of the parties. Put briefly, Nelson sees the solution of the problem of international conflicts in a federal union of states with a central authority (*Zentralgewalt*) strong enough to enforce the prescripts of law. Any condition short of this will present *internationale Anarchie*; and international law would indeed be a *Rechtswissenschaft ohne Recht*.

<sup>40</sup> Nelson, *System der philosophischen Rechtslehre*, S. 523.

<sup>41</sup> This is clearly not the traditional German viewpoint, and it demonstrates how far Nelson, as a Neo-Kantian, is removed from the doctrine of Neo-Hegelianism.



## DEMOCRATIC PLANNING IN AGRICULTURE, II\*

JOHN D. LEWIS

*Oberlin College*

### V. THE DISTRIBUTION OF REPRESENTATION ON PLANNING COMMITTEES

The B.A.E.-Extension Service views quoted above stress the importance of securing on planning committees representatives of all economic, social, racial, and geographic groups found in the county. To what extent are such groups represented on planning committees at present?

A wide geographic distribution of representation is, of course, more easily secured than any other kind of distribution. Geographic boundaries between groups are easily recognized, and it is usually taken for granted that distinct areas should be separately represented. A distribution based on type-of-farming areas will, of course, mean representation of geographic areas. And geographic distribution will ordinarily achieve some degree of distribution among social, economic, nationality, or other groups. In practically all counties, the county committee includes at least one member from each township, other civil district, or type-of-farming area in the county. Ordinarily this is achieved by making the chairman of each community committee, or other member selected by the community committee, also a member of the county committee. In a few cases where the county committee was set up first, a member from each township or district was made responsible for selecting the members of a community committee for his area.

But geographic separateness is of no importance except as geographic boundaries help to create some type of social boundaries. This seems to indicate once more the importance of sociological surveys for plotting communities and neighborhoods as the bases of more meaningful group representation than can be secured by following local unit lines that never were, or are no longer, the boundaries of actual communities.

It is difficult to generalize about the representation on planning committees of farmers of different economic levels. Most county agents will say that the planning committees in their counties are made up of "the leading farmers" or "leading farm men and

\* The first instalment of this article appeared in the April issue.

women." Some will say that all economic levels are represented; others that "the leading farmers" are naturally the more successful and prosperous farmers. There is no reason why a group of low-income farmers should not select a higher-income farmer to represent them; consequently, the absence of low-income farmers from elective committees need not mean lop-sided representation. On the other hand, we may regard with greater suspicion the absence of low-income farmers from an appointed committee, since in this case poorer farmers have not been consulted about how their interests are to be guarded. It seems fairly certain that on the appointed committees of the Southern states representation does not often dip into the lower economic levels. In several Southern states,<sup>28</sup> B.A.E. and Extension leaders have stressed the importance of including F.S.A. clients or small tenants, and county committees in these states usually include one or several committeemen from lower income groups. But it is difficult to oppose the prevalent assumption that small tenants, and particularly sharecroppers, are not competent to recognize and protect their own interests, and that their affairs are best left in the hands of others.<sup>29</sup> A planning organizer in one Southern state expressed the view that in his state perhaps twenty per cent of the farmers were represented on County Planning Committees. He believed also that committees representing these substantial farmers cannot represent small farmers as well, because the problems of the two groups are so completely different. It may be that sufficient digging beneath the surface would reveal similar situations in other parts of the country. A very detailed study of the personnel of numerous selected county committees, and the relating of the findings to the social-economic composition of the counties, would seem to be the only basis for accurate generalizations about the representation of economic groups. This is one of many types of detailed study that might profitably be made in connection with the Land Use Planning program.

<sup>28</sup> E.g., Mississippi and Alabama.

<sup>29</sup> Johnson, Embree, and Alexander quote the following summary from a study of "The A.A.A. and the Cropper" by Hoffsom: "... The cropper is looked upon as a dependent person, the more extreme but not uncommon views regarding him as a class apart, incapable of ever achieving but a modicum of self-direction. . . . There is a considerable feeling among landlords that anything which disturbs the cropper is undesirable. Forty per cent of the [800 landlords interviewed in 1934] stated, for example, that they were opposed to the granting of relief to these people because of its demoralizing effect upon them. . . ." *Op. cit.*, pp. 58-59.

In sixteen of the twenty-two states studied, women were serving on some or all of the county committees. Usually the women are only a small percentage of the whole membership; occasionally a fixed proportion of men and women is established. In Caswell county, North Carolina, for example, four men and three women serve on each community committee, and in North Carolina two men and one woman ordinarily represent each community on the county committee. In Texas, there is frequently an equal number of men and women on the county committee, but this is exceptional. In counties in which a home demonstration agent has been working and in which Homemakers' Clubs have been organized, the inclusion of women on the planning committees is usually taken for granted. Practically all county agents will agree that some women should be included. In counties and states where women are not included, the principal reason seems to be not so much prejudice against having women work on the committees as the fact that the regular extension program in these counties or states has not drawn women into active participation to the same extent as elsewhere.

The cotton belt, cutting a swath three hundred miles wide from the Carolinas to western Texas, is the most densely populated farm area in the country. And it is, of course, the area of densest Negro population. In South Carolina, Georgia, and Alabama, about forty per cent of the population is Negro; in Mississippi, Negro population goes above fifty per cent; in sections of other states, the percentage of Negro population is often even higher. But rural Negroes in the South do not participate in managing the political machinery through which they are governed. Nor do they participate, except in very exceptional cases, in County Land Use Planning. In no Southern state is there any attempt to secure systematic representation of Negro farmers. There are, however, isolated instances of attempts to secure expression of Negro views. In Mississippi, for example, Negro county agents and Negro vocational teachers may be invited to attend meetings of planning committees. The most extensive representation of Negroes appeared to be in Jones county, Mississippi. Here, Negroes are included in several sub-committees of the county committee, and one sub-committee for Negro population is made up entirely of Negroes, including the Negro county agent, the Negro home agent, and five Negro teachers. These committee members are expected to take committee findings back to separately organized Negro community meetings for discussion.

The Negro population of this county is somewhere between twenty and thirty per cent. The county agent explained that, since the welfare of colored farmers was bound to affect the welfare of the county as a whole, Negroes as well as whites should be brought into active coöperation in the planning process. In Covington county, Mississippi, the county agent reported one colored farmer on one community committee. He reported also the organization of one colored community neighborhood, to which presumably the findings of the County Planning Committee will be taken. In Guilford county, North Carolina, a Negro community mapped land-use areas in its section of the county, and its findings were coördinated with the findings of the white county committee. In Caswell county, North Carolina, the planning leaders took a two-day short course on the problems and progress of Land Use Planning in the county to Negro as well as white communities.<sup>30</sup> Negro participation was reported also for Jefferson and Madison counties, Florida, and for Colorado county, Texas. There may be some Negro participation in other counties that the writer has missed, but it is safe to say that such cases are not numerous.

To questions about Negro representation, there was an almost unanimous reply that "It is a problem that we haven't worked out," or "It is a problem that must be worked out." An important Negro administrative official of the Extension Service went no further than white leaders. He said merely that "some way must be worked out" for Negro participation, and added that it must be worked out in the South without Northern pressure. After arriving at the stage of recognizing a "problem," it is difficult to go much further. If deeply ingrained and socially approved prejudice forbids white men to sit in meetings with black men to discuss common problems, the alternative would seem to be to set up a separate parallel organization for Negroes. This is the approach that has been followed in Negro agricultural extension work.<sup>31</sup> But the determination to maintain white supremacy may stand in the way of separate organization as well. One planning organizer in a cotton-belt state explained that a principal Southern objection to

<sup>30</sup> About fifty per cent of the population of the county is colored. Sixty-five and seven-tenths per cent of farm operators are tenants; fifty-four per cent of the tenants are sharecroppers; about fifty per cent of the tenants are Negroes.

<sup>31</sup> In *The County Agent*, (Chicago, 1939), Chap. 8, Gladys Baker discusses some of the difficulties that colored Extension workers face.

the separate organization of Negroes for Land Use Planning was concern lest such organizations get out of control and be "misused." He cited the sharecroppers' union strikes as an example of what organization might lead to. The only conclusion that seems to appear from an examination of Negro participation in Land Use Planning is the rather trite one that no new administrative procedure can be expected to break down deep-rooted racial prejudice over night, particularly when such prejudice is part and parcel of a social-economic organization that rests upon a precarious one-crop plantation system. The occasional lapses in the system of exclusion suggest that this is another phase of Land Use Planning that merits close and continuous study.

Specific representation of the Farm Bureau, the Farmers' Union, or the Grange was reported in January, 1940, for only about four per cent of the whole number of County Planning Committees organized.<sup>32</sup> Other farm organizations are represented occasionally. In Allegany county, Maryland, for example, the secretary of the Farm Bureau, the chairman of the legislative committee of the Farm Bureau, the manager of a dairy coöperative, the director of the county National Farm Loan Association, and the president of the County Council of Homemakers' Clubs are members of the county committee. The county committee of Seneca county, Ohio, includes the president of the Farm Bureau, a representative of the Grange, and a representative of a farmers' elevator organization. But the specific designation of representatives of organizations as committeemen is not common. State organizers and county agents usually fear that this type of representation will tend to weaken planning in the common interest by centering too much attention upon particularized interests. Consequently, when organization officers are appointed to committee membership, their appointment is usually explained as a recognition of their leadership generally rather than as a recognition of their rôle in a particular farm organization.

If one farm organization is especially strong, it may secure a share of committee representation entirely out of proportion to its membership. This is particularly true of the Farm Bureau, whose influence in some states depends not merely upon the size of its

<sup>32</sup> Forty-eight counties in thirteen states out of a total of 1,120 counties. Figures are taken from U.S.D.A., B.A.E. and Extension Service, "Report on the Progress of Land-Use Planning during 1939," p. 9.

membership but also upon the fact that it is the legally-recognized sponsor of extension work in the counties and its board the county agent's advisory board.<sup>33</sup> In Iowa, one of the two strongest Farm Bureau states, Bureau membership in 1939 was somewhat less than twenty per cent of the number of farmers in the state. Yet extension work in Iowa is directly tied to Farm Bureau organization.<sup>34</sup> Consequently, the county agent finds himself trying to serve two masters. As a tax-supported extension agent, he is expected to do educational work and to serve all the farmers of the county. But because of the close relation between extension work and the Bureau, he finds it advisable to take an interest in the commercial activities of the Bureau and to work for a larger Bureau membership.<sup>35</sup> Under such conditions, it is often difficult to get the coöpera-

<sup>33</sup> According to Gladys Baker, "The county agent in about fifteen states is legally responsible to the county farm bureau organization. In approximately eight states, where the county appropriation is mandatory, responsibility to the farm bureau almost entirely replaces responsibility to the county governing-board." *Op. cit.*, p. 135. The contribution of the federal government and of the state is automatic if local conditions for extension work are fulfilled. In the majority of states, this leaves the appointment of a county agent, the size of his salary and operating budget, and even the suspension of extension work, up to the county governing board, which controls county appropriations necessary to supplement federal and state appropriations. But if county appropriations are also made mandatory, and if extension work is made dependent upon Farm Bureau coöperation, the Bureau becomes the active controlling agency.

<sup>34</sup> The County Board of Supervisors must appropriate funds for extension work when a county association is organized with 200 members and pledges of dues amounting to \$1,000. The county Farm Bureau determines the county agent's salary beyond a minimum amount fixed by federal and state funds, and can get rid of a county agent by simply withholding county funds. The Farm Bureau is a commercial as well as an educational organization, and its state and national federations are active legislative lobbyists.

<sup>35</sup> Cf. Baker, *op. cit.*, pp. 136-137. A Land Use Planning report from Adair county Ia., summarizes as follows: "... On the one hand, in carrying on a broad educational program, [the county agent] states that his services are tax supported and, therefore, open to every farmer; on the other hand, when he puts on a Farm Bureau membership drive, prospects want promises of exclusive services and benefits. Relations between the Extension Service and the Farm Bureau have been unusually harmonious; however, as each organization expands its separate programs and goals, the present official relationship in the counties lends itself to conflicts and misunderstandings. The Farm Bureau Board, as it undertakes a wider variety of non-educational activities, is likely to think that it is unduly dominated by extension officials and is forced to emphasize educational programs, slighting other Farm Bureau activities. ... On the other hand, workers in the Extension Service are almost forced to engage in non-educational activities to maintain harmonious relationships." Adair County Agricultural Planning Committee, "Annual Report of Unified Program," May 17, 1940 (mimeo.), p. 29. In 1936-39, Farm Bureau contributions to

tion of a county agent in a time-consuming program of planning that may seem to have only academic importance and to promise only distant and uncertain results. In the second place, County Land Use Planning Committees are appointed in Iowa by the county agent in consultation with the Farm Bureau Board. There is a tendency, natural in view of the relations described, for the Farm Bureau to dominate the planning committees, and this may also mean a tendency for the more prosperous farmers to dominate.

In Illinois, there is an even closer relationship between the Farm Bureau and county extension work. The county Farm Bureau furnishes all the local funds for extension work, and a Farm Bureau Board, elected by the Bureau membership, selects and dismisses the county agent, subject to the formal approval of the state Extension Service.<sup>36</sup> Farm Bureau control appears very clearly in the procedure for organizing Land Use Planning. The decision to cooperate in the program is made by the county agent and his advisory (Farm Bureau) board. A committee consisting of the county agent, the home agent, the Farm Bureau president, and the Farm Bureau home adviser then selects the members of a County Planning Committee, and the Farm Bureau Board approves the selection. In the one county where community committees were set up, members of such committees were chosen by the Farm Bureau Board. The state organization of the Bureau, the Illinois Agricultural Association, is extremely powerful,<sup>37</sup> and in general the state Extension Service exercises a minimum of control and a maximum of diplomacy in dealing with the work of county agents. It is likely that Bureau control and fear of encroachments upon that control account for the fact that Illinois is one of the states in which local suspicion of the whole Land Use Planning program has been strongest.

Iowa and Illinois are two states in which the strength of the Bureau has been most obviously reflected in the methods of organizing planning committees and in their composition.<sup>38</sup> In some other states, the Bureau has been involved in instituting the planning program and a large percentage of committeemen are Bureau mem-

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extension work in Adair county amounted to 13.5 per cent of the total amount spent. *Ibid.*, p. 30.

<sup>36</sup> Cf. Baker, *op. cit.*, pp. 139-141.

<sup>37</sup> It has a membership of 74,000, and is the largest purchasing coöperative in the United States.

<sup>38</sup> I omit consideration of New York because there local representative committees are not an important part of the planning organization.

ministrators charged with the responsibility of operating administrative machinery devised to cope with agricultural problems. It is also part of the theory that trained technicians and administrators can assist farmers accurately to analyze the causes of their difficulties and to find the proper type of remedial procedures, whether the procedures are to be followed by individuals, groups, or governmental agencies. That type of farmer planning was to be avoided that might propose a local A.A.A. schedule totally out of line with national policy and impossible under existing legislation. And that type of technician planning was to be avoided that might propose the resettlement outside the county of farmers who had no desire to leave their homes. It was hoped that the committee machinery set up would achieve a workable fusion between the expression of local needs and experience and the guidance of technical analysis and advice. Planning was to be done, not by experts alone and not by laymen alone, but by representatives of both working together.

The number of representatives of state and federal agricultural agencies who are acting on County Planning Committees indicates the wide spread of participation by technicians and administrators. On each of the 1,120 County Planning Committees, the State Extension Service is represented by the county agent. In addition, the county home agent and one or more vocational agricultural teachers sit on about two-fifths of the county committees, and one or more vocational home economics teachers on about one-seventh. The two federal agricultural agencies with local representation in the largest number of counties are the A.A.A. and the Farm Security Administration. Among the federal agencies represented on planning committees, they naturally stand first, the A.A.A. being represented in more than ninety per cent of the organized counties (1,030 out of 1,120), and the F.S.A. in about eighty-three per cent. Unlike other federal agencies, the A.A.A. is represented by local farmer committeemen rather than by full-time administrative officials. Since county and district A.A.A. committees already existed when Land Use Planning Committees were created, and since planning activities had been undertaken under A.A.A. leadership, it is natural that a large percentage of A.A.A. committeemen should be found on Land Use Planning Committees. It frequently happens that from one-half to three-quarters of the farmer members of the County Planning Committees are also A.A.A. committeemen; but this is by no means true in all counties,



and there seems to be a tendency to increase the number of farmers actively participating in agricultural programs by recruiting a larger percentage of planning committeemen who are not also A.A.A. committeemen. The Soil Conservation Service and the Farm Credit Administration are each represented on about thirty-eight per cent of the committees, and the U.S. Forest Service on twenty-one per cent.<sup>41</sup> Fourteen other federal agencies are represented, but none of these is represented on more than five per cent of the organized county committees.<sup>42</sup>

If the relationship described above is to be maintained, one would expect the agency representatives to act as full members of the county committee. This was obviously the intention of the Mt. Weather Agreement, and it is the practice that most states follow. In some states, however, agency representatives are regularly regarded as "advisory members" or "non-voting members,"<sup>43</sup> and occasionally a county agent will consider the agency representatives as advisory members although the state B.A.E. and extension leaders regard them as full members. The question of exact classification for agency representatives may be an academic one, since if they attend committee meetings at all they undoubtedly participate in the discussion, and since decisions of the committee will not ordinarily depend upon formal votes. The caution in respect to agency representatives indicates a healthy tendency to anticipate and avert the danger that the farmer members of the committee may be so thoroughly dominated by respect for the authority of experts that their own contribution to the planning

<sup>41</sup> *Ibid.*, p. 9; figures as of December, 1939.

<sup>42</sup> Rural Electrification Administration	53	counties	in	10	states
Tennessee Valley Authority	52	"	"	5	"
Bureau of Indian Affairs—U.S.D.I.	23	"	"	9	"
Bureau of Biological Survey	11	"	"	7	"
Division of Grazing—U.S.D.I.	7	"	"	3	"
Federal Crop Insurance Corporation	6	"	"	1	"
Work Projects Administration	3	"	"	3	"
Civilian Conservation Corps Camps	3	"	"	2	"
Bureau of Entomology and Plant Quarantine	3	"	"	1	"
Bureau of Reclamation	2	"	"	1	"
Bureau of Chemistry and Engineering	1	"	"	1	"
National Park Service	1	"	"	1	"
Public Roads Administration	1	"	"	1	"
Bureau of Animal Industry	1	"	"	1	"
U.S.D.A.—unclassified in reports	12	"	"	1	"

*Ibid.*, p. 9. <sup>43</sup> This has been so, for example, in W. Va., Va., Miss., and Mont.

process may be lost. But there is the possibility that planning may occasionally suffer by a too mechanical interpretation of the principle that Land Use Planning must represent farmer thinking. Close coöperation between farmers, technicians, and administrators from the beginning of the process to the end will avoid the disillusionment that comes with the sudden discovery that a carefully worked out plan is simply impossible under existing legislation or federal administrative regulations. During the first year of County Land Use Planning, this sort of disillusionment has arisen in a number of instances from the failure of a county committee to secure comprehensive adjustments in the A.A.A. schedule for the county.

If Land Use Planning Committees become permanent institutions—and there is good reason to believe that they may do so—they must inevitably become an important part of the pattern of local governments. For problems of agricultural and land use adjustments are necessarily related to more general and more specific problems that are of immediate interest to local governments. Planning committees seldom go far before they become involved in questions about such things as land valuation, assessment, the distribution of taxes, tax delinquency and reversion, local water control, and secondary roads. Further study of rural living is likely to lead them to an examination of such subjects as educational facilities, recreational facilities, local health protection, etc. Necessary adjustments in these fields may depend entirely upon local government action, or may require coöperation between local government agencies and state or federal agencies. It is not the purpose of county land use planning to replace or crowd out local government agencies; its purpose is rather to help integrate local, state, and federal activities in each county into a united attack upon basic land use and agricultural problems. There is, of course, the possibility of paralyzing friction between this new type of representative agency and the long-established representative agencies; but there is also the possibility of very profitable collaboration. Mr. Leon Wolcott has called attention to the new opportunities which the land use planning program and earlier agricultural programs have opened to local government agencies.<sup>44</sup>

For the same reason that agricultural agency representatives are

<sup>44</sup> "National Land-Use Programs and Local Governments," *National Municipal Review*, Vol. 28 (1939), p. 111 ff.

included on county committees, it would seem wise to include representatives of local government agencies as well. Although the Mt. Weather Agreement does not mention agencies except those dealing with agriculture, local government agencies are in fact represented on many committees. The county governing board is represented on 164 county committees in seventeen states, school officers on forty-three committees in sixteen states, state and local highway departments on twenty-three committees in eight states. In Maine, the town selectmen are regularly appointed to county committees, and in New Hampshire the county committees ordinarily include one or two selectmen. Other local government officers appear occasionally. State and city planning board representatives are reported for only five committees in two states.<sup>45</sup> It should be noted, however, that these figures do not give an accurate picture of the number of local government officers serving on planning committees. They give only the number of designated representatives. County agents frequently explain that a county commissioner or other county or township officer happens to be a farmer member of a community or county committee, but that he does not represent the board or office. Thus the total number of local government officers serving on planning committees in one capacity or another is considerably greater than the figures given here.

A unique relationship between county government and land use planning exists in Wisconsin. Here the County Planning Committee is built around the County Agricultural Committee. State legislation provides that the County Agricultural Committee shall consist of the chairman of the county board, the county superintendent of schools, and three farmers appointed by the county board. This committee is charged with the supervision of agricultural extension work in the county, and it hires the county agent. Thus a county board committee has the responsibility left in some states to a Farm Bureau Board. This County Agricultural Committee has been the sponsor for land use planning, and in all but one county it has set up a planning committee by simply adding additional farmers and agency representatives to its own membership. Thus there is a direct relationship with county government, since the core of the County Planning Committee is a subcommittee of the county board and the other members of the planning com-

<sup>45</sup> U.S.D.A., B.A.E. and Extension Service, "Report on the Progress of Land-Use Planning during 1939," p. 9.

mittee are appointed by this subcommittee. Community planning committees, appointed by the County Planning Committee, usually include in their membership a number of township officers. They are set up on a township basis, and the town chairman and town assessor are usually appointed as members.

In several northern Minnesota counties, the county board directly sponsors the planning program and shares with the Farm Bureau Board and the county agent responsibility for the appointment of committeemen. In at least two Minnesota counties, the full county board, five in number, became part of the County Planning Committee. In northern Minnesota counties also, a number of town board members and the town assessor are included on community planning committees.

In both Wisconsin and Minnesota, the inclusion of county and town officers on planning committees is regarded as particularly important, because land use planning is likely to begin there with such problems as county zoning, tax delinquency, or forestry development problems which are likely to require the prompt cooperation of local governments. This is especially true of the northern counties in both states, and it is in these counties that the program is moving most rapidly.

Local planning organizers in all states have insisted, almost without exception, that county planning organization and action have been entirely free from local political partisanship. It is probable that determination to avoid the risk of disputes arising from such partisanship has in many instances prevented specific designation of representatives of local government agencies as committeemen. This fear of political involvement is a natural product of the Extension Service tradition of non-partisanship which has been successfully maintained in most states. But it is obvious that land use planning cannot be dissociated from politics, in the proper sense of the word, since so many of the problems which planning committees face are necessarily and properly political questions. A more general recognition of this fact might have an important effect upon the composition of planning committees.

#### VII. SOME CONCLUSIONS

It is one of the tasks of political theory to clarify in terms of principles new political relationships as they develop, and to direct

that development in practice by relating it to normative standards in theory. A broader view of the material examined above suggests some very basic questions about contemporary political theory. One important section of such political theory has dealt with private associations and the rôle that they play in the democratic state. The Guild Socialists pictured a structure of vocational group organization which would rival or replace the traditionally constituted governing authority; others have pictured vocational groupings as self-interested pressure groups, as centers of resistance against the necessary tendency of the modern government to absorb more and more of the freedom of individuals, as multiple balances against the solid weight of the modern Leviathan. Consideration of the recent programs of the Department of Agriculture, and particularly of county land use planning, suggests the inadequacy of both these approaches to explain the nature of the relationship developed between the Department of Agriculture and farmer groups.

In the first place, it was not simply the farmers' organized power of pressure or resistance that made farm problems national problems. The force that farmers can in fact direct against the state has been limited by the lack of effective organization, and by the fact that it is harder to unite on a positive program than on negative opposition. The scattered and sporadic farmer strikes and demonstrations of 1933 were not directed against government force, but rather represented a vague demand for positive government assistance. It is possible to use force to sabotage a positive government program, but it is difficult to see how farmer demonstrations could have forced a new program of action. To picture vocational groups as actual or potential centers of resistance to government encroachments tends to subordinate the importance of the positive, creative rôle of government action and of the positive coöperative relationship that can be created between the state and other associations. The federal government itself called into existence the committees which are expected to represent farmer interests. These committees cannot accurately be described as centers of resistance; they are rather organs for positive collaboration in the making, interpreting, and administering of government policy. Their effect is the result of continuous influence from inside rather than of spasmodic pressure or resistance from outside the government

structure. A simple pressure-group concept is discarded as theory by those who, like former Secretary Wallace and M. L. Wilson,<sup>46</sup> have attempted to interpret this type of democratic participation. It is disproved by practice when significant parts of the agricultural program are found to be operating in the interest of groups that are in no position to exert an effective pressure.

In the second place, the county land use planning program suggests the need for a reappraisal of Guild Socialist and similar pluralist theories. John M. Gaus has suggested recently that the Guild Socialists and pluralists generally "seem to have held oversimple conceptions of the homogeneity of interest of those following a vocation."<sup>47</sup> For farm groups, the heterogeneity arising from such things as commodity or regional competition, organization loyalties, and economic and social differentiation prevents the appearance of a single united front. Two consequences of this heterogeneity might be noted. First, to the extent that democratic compromises must be worked out within heterogeneous vocational groups, the danger inherent in acknowledging and institutionalizing vocational groupings would seem to decrease. On the other hand, this study has shown very clearly that it is difficult to make vocational representation much more extensively representative than the traditional type of territorial representation.

Perhaps the most important aspect of vocational representation as it now operates in agricultural organization is its effect in widening rather than narrowing the outlook of vocational representatives. The relationship between practicing farmers, government technicians, and government administrators which is made possible through the land use planning committees cannot fail to broaden the vision of this particular vocational group and to bring local problems more frequently into the necessary context of national problems and actual or tentative national policies. Obviously, this type of economic democracy, with its emphasis upon the relation between vocational interests and more general interests—while it may be regarded as a supplement to the more familiar type of

<sup>46</sup> Cf. paper read by M. L. Wilson (former Under-Secretary of the Department of Agriculture, now Director of Extension Work) at 36th Annual Meeting, American Political Science Association (Political Theory Section), Dec. 28, 1940, and numerous other speeches by Mr. Wilson.

<sup>47</sup> "The A.A.A. Experience and Guild Socialist Theory," paper read at 36th Annual Meeting, American Political Science Association (Political Theory Section), Dec. 28, 1940.

political democracy—could never be regarded as a substitute for it.

The relationship thus established is not a federal one. It involves no attempt to draw boundaries around spheres of competence. The relationship is rather one of integration, which involves simultaneous centralizing and decentralizing of responsibility. It cannot be defined in theory if we retain a conception of the state as an organization sharply separate from other organizations—as a self-sufficient association with its own exclusive ends, machinery, and personnel; as a self-contained association which can have only external relations with other associations. And it cannot be defined with the help of the Guild Socialist theory of freely-negotiating vocational groups, or of other types of pressure-group interpretations of the democratic process. These share the same fallacy as that which appeared in the theory of economic *laissez faire* and in mechanical states-rights federalism: namely, disregard of the problem of integration. These several theories tend to assume that all difficulties are practically solved when freedom is secured for the individual or the group. But the central problem of the new democracy which seems to be emerging in the relations between government and agriculture is not that of balancing individuals against individuals and groups against groups—is not a problem of balance and resistance at all—but a problem rather of integration. The machinery for democratic participation in policy-making and administration has developed far already. The interpenetration of the views and experience of public officials and of laymen in a private-public complex for performing public functions has been made a part of regular procedure in agricultural administration. A clearer definition of the type of theory which will at once explain and support this development is essential.

## AMERICAN GOVERNMENT AND POLITICS

**Federal Restrictions on the Political Activity of Government Employees.** At various times in the past, the question of the extent to which political activity on the part of government officers and employees should be curtailed has been a subject of public discussion. Within the past two years, the question has arisen again in connection with the passage by Congress of what is popularly known as the Hatch Act.<sup>1</sup> The purpose of the present article is to point out the principal restrictions imposed by this new, as well as by earlier, federal legislation upon the political activity of individual government employees. These restrictions are of three types: (1) those relating to political contributions and solicitation, (2) those relating to political office-holding, and (3) those relating to political activity generally. Each of these types will be discussed, first, in relation to federal employees, and second, in relation to employees of state and local governments.

### I. POLITICAL CONTRIBUTIONS AND SOLICITATION

The Hatch Act contains nothing on the subject of political contributions by or political solicitation of federal employees.<sup>2</sup> The subject, however, is covered by provisions of the Pendleton Law enacted in 1883 which are still in force. After declaring that "no person in the public service is for that reason under any obligation to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so," the Pendleton Act provides further that (1) no officer or employee of the United States, including members of Congress, shall solicit or receive any political contribution from another such officer or employee; (2) no employee shall make any contribution to another employee or to a member of Congress to be used for a political purpose; (3) no person shall solicit or receive any political contribution from a federal officer or employee in a government building; and (4) no officer or employee shall promote or demote any other officer or employee for making or refusing to make a political contribution. Violation of the law is made a misdemeanor punishable by fine not to exceed five thousand dollars, by imprisonment for not over three years, or by both.<sup>3</sup>

<sup>1</sup> There are in reality two Hatch Acts. The first, *Public—No. 252—76th Congress* was passed in 1939; the second, *Public—No. 753—76th Congress*, in 1940.

<sup>2</sup> The term "federal employees" as here used does not include persons who are on federal relief. Sec. 5 of the first Hatch Act forbids any person to solicit or receive contributions from relief workers, and Sec. 6 makes it unlawful for any person to give or to receive lists of such persons for political purposes.

<sup>3</sup> Now a felony, since all offenses punishable by imprisonment for a term exceeding one year are declared by law to be felonies. *Code of the Laws of the United States* (1934), p. 766.



From the foregoing summary of the provisions of the Pendleton Act it is seen that there is no prohibition upon contributions by federal workers to persons who are not employed by the United States if the contribution is not made in a government building. In like manner, solicitation of federal employees, both classified and unclassified, is forbidden only when done by another federal employee or on federal premises. In other words, there is nothing in the law to prevent solicitation by party workers or private individuals. Federal officials may not, however, supply the names and addresses of government employees for this purpose,<sup>4</sup> nor can their names appear upon or be attached to any letter of solicitation.<sup>5</sup> Furthermore, it has been held that the solicitation cannot be by letter addressed to and delivered by mail or otherwise to the building in which the employee works.<sup>6</sup> This is interpreted by the Civil Service Commission to include letters from which the home address has been omitted and which as a result are delivered by the postal authorities to a government building.

The provisions of federal legislation relating to political contributions and solicitation were in some respects erroneously interpreted during the presidential campaign of 1940 by Edward J. Flynn, chairman of the Democratic National Committee. In a letter to Democratic campaign managers, Mr. Flynn pointed out that there was nothing in the Hatch Act or other federal laws to prevent federal employees, whether covered by civil service laws or not, from making contributions to or being solicited by persons other than government workers.<sup>7</sup> He did not point out, however, that the contribution could not be made nor the solicitation occur on federal premises. Mr. Flynn further stated that there was nothing to prevent federal officials from furnishing lists of government workers, together with their salaries, to party candidates, committees, or campaign managers. As already indicated, however, this practice has been forbidden by a ruling of the Civil Service Commission.

## II. POLITICAL OFFICE-HOLDING

The question of whether a person holding an administrative position in the federal government can at the same time hold by appointment another federal, state, or local office, or be a candidate for election to such office, has arisen on many occasions. Prior to the passage of the Hatch Act in 1939, federal employees, both classified and unclassified, were allowed to become candidates for positions filled by presidential appointment.

<sup>4</sup> *Civil Service Act and Rules, Statutes, Executive Orders and Regulations*, U. S. Civil Service Commission (1939), p. 11.

<sup>5</sup> *24 Opinions of the Attorney General*, p. 133; *Political Activity and Political Assessments of Federal Officeholders and Employees*, U. S. Civil Service Commission, Form 1236 (1939), p. 18.

<sup>6</sup> *United States v. Thayer*, 209 U. S. 39 (1908).

<sup>7</sup> *New York Times*, Oct. 18, 1940.

The former had to secure the consent of the department in which they were employed, however, and were forbidden to use their official authority or influence to secure the appointment. They could circulate petitions and seek endorsements, but had to avoid any action that would cause public scandal or give the appearance of coercion.<sup>8</sup> If a presidential appointment was secured by a classified employee, he had, of course, to resign from his former position. These requirements do not appear to have been affected by the provisions of the Hatch Act. They are based upon Civil Service Rule I, the enforceability of which in this respect is not impaired by the provisions of the statute.<sup>9</sup>

The first important interference with the privilege of federal employees to hold state or local office came during President Grant's administration, when federal officeholders in large numbers flocked to the South and took over many positions in the state governments.<sup>10</sup> President Grant declared in an executive order issued on January 17, 1873, that it was his belief that, "with few exceptions, the holding of two such offices by the same person is incompatible with a due and faithful discharge of the duties of either office; that it frequently gives rise to great inconvenience, and often results in detriment to the public service; and moreover is not in harmony with the genius of the government." The order accordingly prohibited persons occupying any appointive federal civil office from holding at the same time any state, territorial, or municipal office. Violation of the order was to be treated as resignation from the federal service.

Despite the apparent stringency of the original order, a number of exemptions were allowed by it and by subsequent interpretative orders.<sup>11</sup> Although most of these were in favor of state and local positions of a non-political character, certain exceptions also were made for political officeholding in municipalities adjacent to the District of Columbia. By a series of executive orders and Commission rulings, federal employees who were permanent residents of Maryland and Virginia municipalities in the metropolitan area of Washington were allowed to become candidates for and hold municipal offices.<sup>12</sup> Persons who availed themselves of the privilege were forbidden, however, to neglect their official positions or to engage in national, state, or county political activity in violation of the civil service rules. In case of violation, the head of the department or independent agency in which the person was employed was required to

<sup>8</sup> *Political Activity and Political Assessments of Federal Officeholders and Employees*, p. 9.      <sup>9</sup> See below.

<sup>10</sup> Jane P. Clark, *The Rise of a New Federalism*, pp. 82-83.

<sup>11</sup> See *Political Activity and Political Assessments of Federal Officeholders and Employees*, pp. 10-15.

<sup>12</sup> The privilege was extended also in 1931 to all federal employees residing in Arlington county, Virginia. *Ibid.*, pp. 16-17.

inflict such punishment as might be recommended by the Civil Service Commission.

An executive order of May 14, 1909, amended on August 27, 1919, authorized the Civil Service Commission, upon the recommendation of the Secretary of the Navy or the Secretary of War, to allow employees of government navy yards or other military establishments to hold elective offices in near-by municipalities. Under this order, a few additional exemptions from the order of 1873 were granted.<sup>13</sup>

The Hatch Act of 1939 contained a broad prohibition against the participation of federal employees in political campaigns,<sup>14</sup> which was interpreted by the Attorney General as prohibiting them from becoming candidates for any elective state, territorial, or municipal office whatsoever.<sup>15</sup> The holding of an appointive position, however, was held to be permissible provided that it was specifically authorized by statute or executive order, and provided that the employee did not engage in political management in securing the office or in discharging its duties.

Although the prohibition against the holding of elective office affected only a small number of federal employees who were members of town councils or held other elective positions in municipalities in the metropolitan area of Washington, the second Hatch Act contained an exemption in their favor. The Civil Service Commission was authorized to permit government employees to take part in politics in the Maryland and Virginia municipalities adjacent to the District of Columbia and in any other municipalities a majority of whose voters were employed by the federal government. Since the act of 1940 does not automatically restore former privileges, it is necessary for the municipalities in question to petition the Commission to allow local residents who are federal office-holders to become candidates for elective positions. If the municipality is one for which an exemption had previously been made, it must prove to the satisfaction of the Commission that the situation is the same as that which existed prior to the passage of the original Hatch Act. If the privilege had not previously been conferred, the municipality must submit information to show that the duties of the offices are purely local and are not involved in state or national politics, that both nominations and elections are non-partisan, and that both federal employees and the local communities will be benefitted by exemption from the law. Municipalities

<sup>13</sup> *Annual Report of the United States Civil Service Commission*, 1928, p. 22; *ibid.*, 1929, p. 19.      <sup>14</sup> See below.

<sup>15</sup> In a subsequent opinion (April 17, 1940), the Attorney General ruled that "if one acquires an elective office without being a candidate therefor and without actually taking any part in any political campaign or political management . . . his acceptance and holding of the office is not to be viewed differently than if it were an appointive office—the statute being directed at political activity rather than the holding of public office."

which are not in the vicinity of Washington must supply essentially the same information, and in addition must show that more than one-half of their registered voters are employees of the federal government. Before granting their request, the Civil Service Commission will consult the department whose employees are principally concerned.<sup>16</sup>

### III. POLITICAL ACTIVITY

Although the general impropriety of active participation in political campaigns on the part of federal employees was recognized very early in our history, it was not until 1883 that the practice was dealt with in any act of Congress. The Pendleton law declared that "no person in the public service is for that reason under any obligations . . . to render any political service," nor does he have "any right to use his official authority or influence to coerce the political action of any person or body." The act imposed upon the president the duty of preparing suitable rules for putting this and other provisions of the law into effect. Rule I accordingly provided that "no person in the executive civil service shall use his official authority or influence for the purpose of interfering with any election or affecting the results thereof."

No general prohibition, however, was placed by the rules upon the participation of federal employees in political campaigns. In 1886, President Cleveland issued an executive order in which he warned all federal office-holders "against the use of their official positions in attempts to control political movements in their localities."<sup>17</sup> Because of the fact that the order was enforceable by department heads rather than by the Civil Service Commission, there was no uniformity in its application. As the Civil Service Commission pointed out in its eleventh annual report,<sup>18</sup> "the rules against offensive partisanship are usually strictly construed against the opponents of the party in power, and leniently against their adherents. Government officials belonging to the opposite party are dismissed for attending primaries, writing letters of congratulation to successful candidates, and the like, while adherents of the party in power do these things with impunity. As a matter of fact, no rule about what is deemed proper partisanship in the classified service has ever been authoritatively construed, and the Commission has no authority to construe such a rule."

Except for the effort made by President Roosevelt in 1902 to set up different standards of conduct for classified and unclassified employees,<sup>19</sup>

<sup>16</sup> Information supplied by the U. S. Civil Service Commission.

<sup>17</sup> *Fourth Annual Report of the United States Civil Service Commission*, 1885-86, pp. 541-542. <sup>18</sup> P. 20.

<sup>19</sup> *Nineteenth Annual Report of the United States Civil Service Commission*, 1901-02, p. 20.

there was no change in the situation described in the preceding paragraph until 1907. At that time Civil Service Rule I was amended to read as follows: "No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the results thereof. Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns."

The result of this change in the rules was to give the Civil Service Commission the power to interpret the prohibition against political activity by classified employees and thus to make uniform for all departments a prohibition which in the past had been individually interpreted by each department head. The Commission, however, was given no independent power to enforce the rule. It could investigate reported cases of violation, but could only recommend to the departments concerned the punishment which it thought necessary. The result was that some departments accepted the recommendations of the Commission and others did not. This situation continued until 1938, when Rule XV was amended to require disbursing and auditing officers to withhold the salary of classified employees who continued to violate the rule against political activity for ten days after a recommendation for discipline had been made by the Commission. On July 20, 1939, the Comptroller General ruled in a letter to the Postmaster General that he had no authority to approve the payment of salary to a postal employee who was not removed from office in accordance with a recommendation of the Commission. It was therefore more than thirty years after the political activity rule was adopted before the Civil Service Commission was given any power to enforce it.

It should be noted that although Rule I is applicable in its entirety to the classified service, it does not apply, except the first sentence, to persons in the unclassified service. Persons in the latter group were therefore, prior to the Hatch Act, not forbidden to engage in political activity, the second sentence of the rule having no application to them except in cases where they might attempt to coerce classified employees who were under their jurisdiction.

The first Hatch Act, however, contained, as already noted, a broad prohibition against the participation of federal employees in political campaigns. Section 2 of the law makes it unlawful "for any person employed in any administrative position by the United States . . . to use his official authority for the purpose of interfering with, or affecting, the election or the nomination of any candidate" for a federal office. In addition, Section 9 of the law provides: "It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or depart-

ment thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, shall take any active part in political management or in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates."

The only persons exempt from these provisions are (1) the president and vice-president, (2) employees of the president's office, (3) the heads and assistant heads of the executive departments, and (4) officers appointed by the president with the consent of the Senate who "determine policies to be pursued by the United States in its relations with foreign powers or in the nation-wide administration of federal laws."<sup>20</sup> The law applies therefore to all federal officials and employees, both classified and unclassified, with the exception of these four groups.

Since the Hatch Act provides that the political activities which are forbidden by Section 9 shall be the same as those which were prohibited to classified employees by the Civil Service Commission at the time when the law went into effect,<sup>21</sup> this section represents only an enactment into law of restrictions formerly imposed upon classified employees by administrative rule and their extension to the previously exempt unclassified group. There are, however, three exceptions to this statement, the first of which concerns the right of federal employees to express their opinions on political subjects. Rule I formerly reserved to classified employees the right "to express privately their opinions on all political subjects." The Hatch Act, on the other hand, reserves to *all* employees the right "to express their opinions on all political subjects and candidates." The omission of the word "privately" from the act gives to all employees, the Attorney General has ruled, the right to express their opinions publicly, provided that they do not do so as a part of an organized political campaign.<sup>22</sup>

Another exception is found in the provision of the Hatch Act which declares that no person employed in any capacity by the federal government shall be a member of any party which advocates the overthrow of constitutional government in the United States.<sup>23</sup> No such restriction

<sup>20</sup> Sec. 9.

<sup>21</sup> Sec. 15.

<sup>22</sup> Opinion delivered Jan. 8, 1941. This interpretation follows the opinion expressed by President Roosevelt at the time he signed the first Hatch Act. The President stated at that time: "I have been asked whether they [government employees] would lose their positions if they should merely express their opinion or preference publicly—orally, by radio, or in writing—without doing so as part of an organized political campaign. The answer is no." *Pernicious Political Activities; Message from the President of the United States Relating to Senate Bill 1871*, Sen. Doc. No. 105, 76th Cong., 1st Sess., p. 2.

<sup>23</sup> Sec. 9A.

had previously been placed upon classified employees by the Civil Service Commission. The third exception is that the prohibition upon political activity which is imposed by the law does not apply to campaigns and elections (1) in which none of the candidates represents a party which polled any votes in the preceding national election or (2) in which the question is not specifically identified with any national or state political party.<sup>24</sup> The second part of this exemption covers "questions relating to constitutional amendments, referenda, approval of municipal ordinances, and others of a similar character."

Except in these three respects, the Hatch Act makes no change in the prohibitions previously imposed upon classified employees by the Civil Service Commission. Unclassified employees, with the exception of the groups mentioned in the law, will in future be subject to the same restrictions. They will not, however, be subject to any additional restrictions which might conceivably be imposed upon classified employees by the Civil Service Commission under Rule I. The definite effect of the law, so far as the unclassified service is concerned, is to "freeze" the prohibitions upon political activity to which the classified service was subject in 1940. It is possible that these same prohibitions may also be "frozen" as respects the classified group. On that point the law is not clear.<sup>25</sup>

The restrictions imposed by the Hatch Act and by Rule I apply to federal employees, not only when they are on duty, but also when they are on furlough or leave of absence. They apply also to temporary, emergency, and substitute employees during the period of their employment. Furthermore, it is not permissible for an employee to take a leave of absence for the purpose of working for a political committee or organization or of becoming a candidate for an elective office with the understanding that he will resign his position if nominated or elected.<sup>26</sup> Retired employees, however, are not regarded as subject to the law and rules, and are therefore free to engage in politics to the same extent as persons not connected with the government service.

The Civil Service Commission has ruled that whatever an employee is forbidden to do "directly or personally, he may not do indirectly or through an agent, officer, or employee chosen by him or subject to his control. Employees are therefore accountable for political activity by persons other than themselves, including wives or husbands, if, in fact, the

<sup>24</sup> Sec. 18.

<sup>25</sup> Although Sec. 15 provides that the political activities which are forbidden by Sec. 9 shall be the same as those which were prohibited to classified employees by the Civil Service Commission at the time the law went into effect, Sec. 10 declares that the provisions of the act shall be in addition to and not in substitution for any other provision of law.

<sup>26</sup> *Political Activity and Political Assessments of Federal Officeholders and Employees*, p. 3.

employees are thus accomplishing by collusion and indirection what they may not lawfully do directly and openly. . . . This does not mean that an employee's husband or wife may not engage in politics independently, upon his or her own initiative, and in his or her own behalf."<sup>27</sup> There must not be any collusion or coercion, however, which would impute the activity of one to the other.

The question of what constitutes active participation is one which it is extremely difficult to answer. In the final analysis, it is, of course, not possible to enumerate all of the activities which are forbidden to federal employees nor all of those which are permitted. Furthermore, the difference between forbidden and permitted activity is in some instances one of degree only, as a number of the following examples will show.<sup>28</sup>

A federal employee may attend a political convention as a spectator only. He may not serve as a delegate or committee member nor take any part in deliberations or demonstrations. On the other hand, he may not only attend a primary meeting, mass convention, or caucus but may participate in its deliberations to the extent of voting on all questions. Membership in a political club is allowed, but taking an active part in its affairs is prohibited. As already noted, employees may express their opinions publicly on political subjects and candidates so long as they do not take an active part in the campaign. Although they are forbidden to distribute badges or buttons, they may wear them, and in addition may put pictures or stickers in the windows of their homes and automobiles. They may not march in a political parade except as members of a band or orchestra which is generally available for hire as a musical organization.

Under the political activity rule, offensive activities at primary and regular elections are forbidden. An employee "must refrain from soliciting votes, assisting voters to mark ballots, helping to get out the voters on registration and election days, acting as the accredited checker, watcher, or challenger of any party or faction, assisting in counting the vote, or engaging in any other activity at the polls except the marking and depositing of his own ballot. Rendering service, such as transporting voters to and from the polls and candidates on canvassing tours, whether for pay or gratuitously,"<sup>29</sup> is also prohibited. On the other hand, these activities would seem to be permissible if the election is non-partisan or non-political in character.

As already indicated, the Hatch Act guarantees to every government employee the privilege of voting as he chooses. Although not guaranteed

<sup>27</sup> *Ibid.*, p. 5.

<sup>28</sup> See *Relative to Pernicious Political Activities*, by the Attorney General of the United States, Sen. Doc. No. 135, 76th Cong., 2nd Sess. (1939); and *Political Activity and Political Assessments of Federal Officeholders and Employees*, Form 1236, U. S. Civil Service Commission, 1939.

<sup>29</sup> *Ibid.*, p. 7.



by the law, the right of assembly and petition seems not to be interfered with. An act of 1912 guarantees this right to classified employees so far as petitioning or giving information to Congress is concerned.<sup>30</sup> The Civil Service Commission has ruled, however, that the right does not extend to petitions addressed to state or local governments. "A classified employee is permitted to sign petitions of the latter class *as an individual*, without reference to his connection with the Government, but he may not initiate them, circulate them, or canvass for the signatures of others."<sup>31</sup>

When President Roosevelt signed the original Hatch Act, he issued a lengthy statement in which he enumerated several activities which would be permissible under the law.<sup>32</sup> The two which are of chief importance are: (1) membership in such organizations as Young Republican Clubs, Young Democratic Clubs, the League of Women Voters, the American Federation of Labor, and the Congress of Industrial Organizations is not forbidden, and (2) the act does not take away the right of every government employee to disseminate factual information regarding the conduct of government affairs or to answer attacks upon or misrepresentations concerning his work.

Although the first Hatch Act stipulates that any federal employee who violates the law shall be "immediately removed from the position or office held by him," it does not provide for any method of enforcement. In the statement issued by President Roosevelt at the time he signed the act, he said that he was asking the Attorney General "to take the necessary steps through the new Civil Liberties Unit of the Department of Justice in order that the civil rights of every government employee may be duly protected and that the element of fear may be removed." The Department of Justice therefore assumed the duty of interpreting the law to individuals who sought to ascertain its application to particular situations. After a brief period, however, this practice was discontinued and the duty of interpreting the law as it applies to the classified service was taken over by the Civil Service Commission. At the same time the Department of Justice announced that it would give no further opinions except upon request of the president or the head of an executive department.

Not only did the Civil Service Commission take over the duty of interpreting the law, but it also assumed that of enforcing its provisions as they relate to classified employees.<sup>33</sup> Since the act neither adds to nor sub-

<sup>30</sup> *Code of the Laws of the United States* (1934), p. 85.

<sup>31</sup> *Political Activity and Political Assessments of Federal Officeholders and Employees*, p. 8.

<sup>32</sup> *Pernicious Political Activities; Message from the President of the United States Relating to Senate Bill 1871*, Sen. Doc. No. 105, 76th Cong., 1st Sess.

<sup>33</sup> *Press Release*, U. S. Civil Service Commission, Aug. 8, 1940.

tracts from the list of activities which had been previously forbidden under Rule I, except as noted above, the Commission is in reality enforcing only the provisions of the rule as they apply to the classified group. It has no power to interpret or enforce the act as it relates to unclassified employees, and so this is left to each department or other agency of the government. At least some of these have incorporated the acts which had been previously held to be in violation of the rule into their own personnel regulations. Under such circumstances, however, uniform enforcement of the law as it applies to unclassified employees is extremely unlikely.

It should be noted in connection with the enforcement by the Civil Service Commission of the provisions of the Hatch Act as they relate to classified employees that the act provides for no scale of penalties such as have been used in the enforcement of Rule I. The law provides only that in case of violation of these provisions the person shall be immediately removed from office.<sup>34</sup> On the other hand, the penalties for violation of Rule I formerly ranged from reprimand to removal. The conflict between rule and law at this point has, however, been eliminated by an opinion of the Attorney General to the effect that the provisions of the law are controlling and that penalties of less than removal cannot be invoked.<sup>35</sup>

#### IV. EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

When President Roosevelt signed the Hatch Act of 1939, he called attention to the fact that its prohibition upon political activity by government employees applied only to employees of the federal government. He suggested that Congress at its next session study the feasibility of extending the provisions of the law "to cover state and local government employees who participate actively in federal elections."<sup>36</sup> It seems to have been his thought that Congress had the power to protect the integrity of congressional and presidential elections and that this power should be exercised through a prohibition upon active participation in them by all employees of state and local governments.

The provisions of the second Hatch Act are much more far-reaching, however, than the suggestion of the President. Section 2 of the first law, under which federal employees had been forbidden to use their official authority for the purpose of interfering with any congressional or presidential nomination or election, was broadened to apply to those employees of state and local governments who were engaged in activities financed wholly or in part by federal funds. In addition, Section 12(a) of the act of 1940 forbids persons whose principal employment is in a federally-aided activity (1) to use their official authority or influence for the purpose of

<sup>34</sup> Sec. 9A (2).

<sup>35</sup> Opinion delivered Jan. 8, 1941.

<sup>36</sup> *Pernicious Political Activities, Message from the President of the United States Relating to Senate Bill 1871*, p. 4.

interfering with *any* nomination or election, (2) to coerce, command, or advise any other such employee to make a political contribution or loan, and (3) to take any active part in political management or political campaigns.

The prohibitions imposed by Section 12(a) differ in only one respect from the prohibitions imposed by the original Hatch Act upon all federal employees. The difference is that the original law contained no provisions relating to political contributions by or political solicitation of federal employees; nor were any added in 1940. Except for this difference, the political activities forbidden by the second Hatch Act to certain employees of state and local governments are the same as those which are forbidden by the act of 1939 to all federal employees.

The most difficult question involved in the application of the Hatch Act to employees of state and local governments is not, therefore, the political activities which are forbidden but the determination of the persons who are covered. As noted above, Section 2 of the law applies to *all* employees of state or local government agencies who are engaged in activities financed wholly or in part by federal loans or grants. On the other hand, Section 12(a) applies only to those whose *principal employment* is in a federally-aided state or local activity. Both sections make the performance of some function in connection with a federally-financed activity a condition necessary to bring a person within the scope of the law. Section 12(a), however, sets up another condition. The words "principal employment" have been interpreted by the Civil Service Commission as referring to employment with the state or local agency, and not to employment which is not in the public service.<sup>37</sup> In other words, Section 12(a) applies only to those officers and employees whose principal employment with the state or local government is in connection with an activity which is federally-financed.

President Mitchell of the Civil Service Commission illustrated this point in an address before the National Association of Attorneys General in the following manner.<sup>38</sup> "For instance," he said, "the principal employment of most highway commissioners is something else than the work of the highway commission. Nevertheless, they come under the law—unless they are elected officials, and that is the case in only two or three states—because their state employment is principally with an activity which is financed in whole or in part from federal funds. However, in most cases, highway commissioners give only a small portion of their time to highway work, and, therefore, the Commission, following the principle in a decision rendered by the Attorney General of the United States in a case relating

<sup>37</sup> *Political Activity and Political Assessments*, U. S. Civil Service Commission, Form 1236-A, p. 13.

<sup>38</sup> *Press Release*, U. S. Civil Service Commission, Sept. 7, 1940.

to government employees, has decided that they are only affected by the Hatch Act during the time that they are actually engaged in the work of the highway commission. In other words, they are restricted as to political activity during the time they are actually working for the state highway commission, but are perfectly free to engage in political activity while they are pursuing their everyday avocations as merchants, bankers, lawyers, and other ordinary employment. The same ruling, of course, applies to members of other state boards who are not giving more than a portion of their time to the state."

The Hatch Act covers not only the members of state and local boards while they are engaged in administering a federally-financed activity, but also all persons whose employment with such agencies is temporary, part-time, intermittent, or on a *per diem* basis.<sup>39</sup> Such employees are forbidden to engage in political activity, however, only during periods of active duty. Officers and members of the National Guard, for example, are subject to the law while in active service and on drill nights. On the other hand, full-time employees are covered at all times, even during periods of leave. Retired employees, however, are not subject to the law and can engage in politics to the same extent as persons who are not connected with the public service. Likewise exempt are governors, lieutenant governors, mayors, and all other elected state and local officers, as well as officers and employees of both the legislative and judicial branches of government.

In order to determine the persons who are covered by the provisions of the second Hatch Act, it has also been necessary for the Civil Service Commission to interpret the word "activity." The question here is whether, for example, all the employees of a highway department, or only those whose salaries are paid from federal funds, or only those who perform functions in connection with a federally-aided activity within the department, are covered by the law. In attempting to settle this, the Commission has indicated its intention to keep the meaning of the word "activity" in close relationship to the terms of the federal grant. In other words, the specific language of the statute, regulation, or order which makes the grant is taken as basic in determining what constitutes "activity" within the meaning of the Hatch Law.<sup>40</sup>

In the case of the Federal Highway Act, for example, the grants can be used only for the construction and reconstruction of roads and highways. The act declares construction to mean "the supervising, inspecting, actual building, and all expenses incidental to the construction of a highway except locating, surveying, mapping, and costs of right of way."<sup>41</sup>

<sup>39</sup> *Political Activity and Political Assessments, Form 1236-A*, p. 12.

<sup>40</sup> *Interpretations of the Hatch Act and Regulations on Political Activity*, U. S. Civil Service Commission.

<sup>41</sup> *Code of the Laws of the United States* (1934), p. 969.

In like manner, reconstruction is defined as "a widening or a rebuilding of the highway or any portion thereof to make it a continuous road, and of sufficient width and strength to care adequately for traffic needs." All employees of a state highway department whose principal employment is in the field of highway construction or reconstruction as defined in the law are therefore held to be forbidden to engage in political activity. On the other hand, all of those who are engaged primarily in maintenance work can take an active part in politics unless it can be shown that the work is financed wholly or in part by other federal funds. Employees in staff or auxiliary divisions of the department may or may not be under the Hatch Act, depending upon whether or not the functions which they perform in connection with the jointly financed activities constitute the principal part of their employment with the state organization.<sup>42</sup>

The Civil Service Commission has also had to interpret the word "activity" in relation to the work of a number of educational institutions. In the case of the land-grant colleges, the provisions of the second Hatch Act have been held to apply to practically all of their employees. The basis for this ruling is that the Morrill Act of 1862 imposes certain conditions upon the states which must be complied with in order that the land-grant colleges continue to receive the benefits of subsequent grant-in-aid acts. Although the general purpose of the Morrill Act was to supply aid for the establishment of colleges for the benefit of agriculture and the mechanic arts,<sup>43</sup> the funds derived from the sale of the land granted to the states were to constitute a perpetual fund, the interest on which goes into the general funds of the institution. There is only one restriction upon the use of this money—namely, that no part of it shall be applied in any way to the purchase, erection, preservation, or repair of any building or for the purchase of any land. The act provides that an annual report shall be made to the Secretary of the Interior, and that if any portion of the fund is diminished or lost it shall be replaced by the state. Since the Secretary of the Interior has ruled that failure on the part of a state to conform to these requirements will render it liable to non-certification of funds appropriated by the second Morrill Act of 1890 and the Nelson Amendment of 1907, it is clear that the federal government exercises a continuing control over the land-grant colleges. It is for this reason that the Civil Service Commission has ruled that the second Hatch Act applies to all employees of such institutions except those whose principal employment is in connection with activities for which federal funds obtained under the act of 1862 may not be used.

In addition to the so-called land-grant colleges, there are also a number of other state colleges and universities which have been the beneficiaries

<sup>42</sup> *Interpretations of the Hatch Act and Regulations on Political Activity*, as cited.

<sup>43</sup> *Code of the Laws of the United States* (1934), pp. 135-136.

of land grants from the federal government. In such cases, however, the land was granted to the states for the establishment or maintenance of a college or university with no subsequent control to be exercised by the federal government. Title to the land passed to the state and control over it to the state legislature. The state was not obligated to establish any specific type of institution, nor to make any report to the federal government regarding the manner in which the proceeds from the sale of the land were used. Grants such as these are held by the Civil Service Commission to be completely executed, and therefore not to furnish any basis for application of the provisions of the second Hatch Act.

Although the Civil Service Commission has not passed specifically on the status of all employees of vocational schools which receive federal funds under the Smith-Hughes Act of 1917 and the George-Deen Act of 1936, it has held that teachers of vocational subjects in such schools are covered by the provisions of the law. This ruling is based upon the fact that the Smith-Hughes Act authorized federal appropriations for the purpose of "paying the salaries of teachers, supervisors, and directors of agricultural subjects, and teachers of trade, home economics, and industrial subjects, and in the preparation of teachers of agricultural, trade, industrial, and home economics subjects" . . .<sup>44</sup> Since the funds provided by both acts can be used only for vocational purposes, it would seem to follow that the only employees of such schools who are covered by the second Hatch Act are the teachers of vocational subjects.

On the other hand, it is possible that all teachers in the vocational schools, as well as many other public school teachers, in a majority of the states may be covered by the provisions of the law. The reason is to be found in the fact that federal laws of 1908, 1920, and 1934 authorize grants of money to the states for the benefit of public education. The act of 1908 provides that 25 per cent of all money received as income from the forest reserves of the United States shall be paid annually to the states in which the reserves are located, the money to be spent as the legislature shall direct for the benefit of the roads and schools of those counties in which the reserve is located.<sup>45</sup> The act of 1920 provides that 37½ per cent of the receipts of the United States from bonuses, royalties, and rentals on public lands which contain non-metallic mineral deposits shall be paid annually to the states in which the lands are located, the proceeds to be devoted as the legislature shall direct to public roads or public education.<sup>46</sup> The act of 1934 provides that 25 per cent of the money received from grazing districts situated on Indian lands which have been ceded to the United States for disposition under the public land laws shall be paid to the states in which the lands are located, to be spent as the state legislature

<sup>44</sup> *Code of the Laws of the United States* (1934), p. 905.

<sup>45</sup> *Ibid.*, p. 663.

<sup>46</sup> *Ibid.*, p. 1344.

shall direct for the benefit of the public schools and roads of the counties in which the lands are located.<sup>47</sup> The act also provides that 50 per cent of the money received from other grazing districts shall be returned to the states for distribution among the counties, but does not specify the purposes for which it must be spent.

The Civil Service Commission has ruled as respecting the acts of 1908 and 1934 that since Congress can at any time change the percentage allotment to the states,<sup>48</sup> the grants provided by these two acts are grants within the meaning of Section 12(a) of the second Hatch Act. All public school teachers in the counties of those states which receive forest-reserve and grazing-district funds are therefore held to be prohibited from engaging in political activity.<sup>49</sup>

Although the Commission has not passed specifically upon the status of teachers in the mineral-royalty states,<sup>50</sup> it appears that they may also be covered by the provisions of the second Hatch Act. Since the law of 1920 does not provide for apportionment of the grants by the states to the counties in which the mineral deposits are located, it is possible, if any of the money is used for state-wide educational purposes,<sup>51</sup> that all public school teachers in these states may be forbidden to engage in political activity. If the legislature directs that the money be turned over to the counties which contain the mineral deposits and they use it voluntarily or by direction for public education, then only the teachers of those counties would be affected. On the other hand, the act of 1920 might be the means of bringing all the highway employees of the mineral-royalty states, or of certain counties within these states, under the Hatch Act. In like manner, the acts of 1908 and 1934 might be used to bring county highway employees in the forest-reserve and grazing-district states within the scope of the law.

In addition to the grants which are authorized by the acts mentioned above, there have also been grants of both land and money to many of the states which they were required to use for public education.<sup>52</sup> These grants,

<sup>47</sup> *Ibid.*, pp. 1853-1854.

<sup>48</sup> In the case of the act of 1908, it is necessary for Congress to authorize the appropriation annually. Some control over funds collected under the act of 1934 is exercised by the Secretary of the Interior.

<sup>49</sup> In 1937, thirty-nine states and two territories received forest-reserve funds. Timon Covert, *Federal Funds for Education, 1937-38* (Leaflet No. 54, United States Department of the Interior), p. 21. Ten states received grazing-district funds in 1940. Figures are not available regarding the number of counties among which the funds were distributed.

<sup>50</sup> In 1937, fifteen states received mineral-royalty funds. *Ibid.*, p. 22.

<sup>51</sup> The act of 1920 provides that the grants shall be used for public roads or public education; the acts of 1908 and 1934 use the conjunction "and."

<sup>52</sup> See D. S. Hill and W. A. Fisher, *Federal Relations to Education* (Report of the National Advisory Committee on Education: Part II, Basic Facts), pp. 30-34; also

like those for educational institutions other than land-grant colleges, appear to be completely executed so far as the federal government is concerned. None of the land or money could be reclaimed, and no reporting by the states has ever been required. Although the question has not been passed on by the Civil Service Commission, it seems clear that these grants do not furnish any basis for application of the provisions of the second Hatch Act.

One of the most unfortunate features of the second Hatch Act is that its provisions do not apply with equal effect to all persons within a given field of state activity. Some of the employees of a state highway department are denied the privilege of engaging in political activity while others are not. Teachers in some state universities and in some counties are covered by the law, while those in other state universities or in adjoining counties are not.<sup>53</sup> The fault in this respect seems to lie with the law, however, rather than with the manner in which its provisions have been interpreted. On the other hand, it is doubtful from a constitutional standpoint whether the provisions of the measure could have been made to apply to all state employees.

Administration of the law likewise involves a number of difficulties, the most serious of which is perhaps that of tracing the federal money to its ultimate use. There are already indications that the methods of allocation and accounting used by some of the states are not well worked out. Under such circumstances, determination of the actual persons who are covered by the law may become in many cases almost an impossibility.

As already suggested, enforcement of the second Hatch Act as it applies to employees of state and local governments is vested in the Civil Service Commission.<sup>54</sup> The law makes it the duty of every federal agency through which funds are dispensed to the states to report to the Commission the names of any state or local office-holders whom it has reason to believe are violating the law. Upon receipt of such a report or of any other information which seems to justify an investigation, the Commission is required, after notice to the persons and agency involved, to conduct a hearing and pass upon the alleged violation.<sup>55</sup> If the law is found to have been violated, the Commission may at its discretion order removal of the guilty persons. If the removal order is not carried out within 30 days, or if the person is

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F. H. Swift, *Federal and State Policies in Public School Finance in the United States*, pp. 26, 31.

<sup>53</sup> See Joseph R. Starr, "The Hatch Act and Academic Freedom," *Bulletin of the American Association of University Professors*, Vol. 27 (Feb., 1941), pp. 61-69.

<sup>54</sup> Sec. 12(b)-12(d).

<sup>55</sup> The only investigation which has been authorized so far is of employees in certain departments of the Illinois state government. *Press Release*, U. S. Civil Service Commission, Mar. 13, 1941.



discharged and within 18 months is employed by another state or local agency, the Commission is empowered to order the appropriate federal agency to withhold from its grants or loans to the state agency in which the violation occurred an amount equal to two years' salary of the employee.<sup>56</sup> Any person who is aggrieved by an order of the Commission may within 30 days institute proceedings in the appropriate federal district court for a review on questions of both law and fact.

#### V. CONSTITUTIONALITY

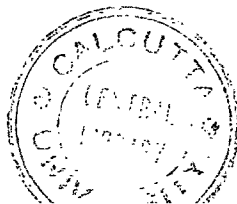
The constitutionality of legislation restricting the political privileges of public employees has been upheld on several occasions by both state and federal courts. In the case of *Ex parte Curtis*,<sup>57</sup> decided in 1882, the federal Supreme Court, in upholding the provisions of a federal law of 1876 which prohibited political contributions and solicitation, said: "If there were no other reasons for legislation of this character than such as relate to the protection of those in the public service against unjust exactions, its constitutionality would, in our opinion, be clear; but there are others, to our minds, equally good. If persons in public employ may be called on by those in authority to contribute from their personal income to the expenses of political campaigns, and a refusal may lead to putting good men out of the service, liberal payments may be made the ground for keeping poor ones in. So, too, if a part of the compensation received for public services must be contributed for political purposes, it is easy to see that an increase of compensation may be required to provide the means to make the contribution, and that in this way the government itself may be made to furnish indirectly the money to defray the expenses of keeping the political party in power that happens to have for the time being the control of the public patronage. Political parties must almost necessarily exist under a republican form of government; and when public employment depends to any considerable extent on party success, those in office will naturally be desirous of keeping the party to which they belong in power. The statute we are now considering does not interfere with this. The apparent end of Congress will be accomplished if it prevents those in power from requiring help for such purposes as a condition to continued employment."

In 1930, this decision was reaffirmed in the case of *United States v. Wurzbach*.<sup>58</sup> At that time, it was argued that since Congress has been denied the power to regulate primaries, it has no power to prohibit contributions by federal employees to a member of Congress when they are

<sup>56</sup> It will be observed that the penalty is imposed upon the state if the discharged person is employed by *any* state or local agency in *any* capacity whatever within 18 months after his discharge.

<sup>57</sup> 106 U. S. 371.

<sup>58</sup> 280 U. S. 396.



used by him to promote his own renomination. The Court rejected this argument, however, and pointed out that "the power of Congress over the conduct of officers and employees of the government no more depends upon authority over the ultimate purposes of that conduct than its power to punish a use of the mails for a fraudulent purpose is limited by its inability to punish the intended fraud." Continuing, the Court declared: "It hardly needs argument to show that Congress may provide that its officers and employees neither shall exercise nor be subjected to pressure for money for political purposes, upon or by others of their kind, while they retain their office or employment. . . . Neither the constitution nor the nature of the abuse to be checked required us to confine the all-embracing words of the act to political purposes within the control of the United States."

The state courts have taken a similar view regarding prohibitions upon the political activity of state and municipal employees. In *McAuliffe v. Mayor of New Bedford*,<sup>59</sup> Judge Holmes (later Justice Holmes of the federal Supreme Court), in upholding the validity of a municipal regulation prohibiting members of the police department from soliciting money for political purposes or belonging to political committees, said: "There is nothing in the constitution or the statute to prevent the city from attaching obedience to this rule as a condition to the office of policeman, and making it part of the good conduct required. The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him. On the same principle, the city may impose any reasonable condition upon holding offices within its control."

The most recent state case is *Stowe v. Ryan*,<sup>60</sup> decided in 1931, in which the Supreme Court of Oregon upheld the action of the Multanomah county civil service commission in removing a county employee for violation of the law prohibiting civil service employees from engaging in politics. It seems clear, therefore, that governments in the United States have plenary power to restrain the political activities of their own officers and employees in order to promote efficiency, integrity, and discipline in the public service.

The question of whether the federal government can validly curtail political activity on the part of those employees of state and local governments who are engaged in activities financed wholly or in part by federal funds has not yet been judicially decided. The acceptance by a state of a

<sup>59</sup> 155 Mass. 216; 29 N. E. 517 (1892).

<sup>60</sup> 296 Pac. 857.

federal grant has in the past entailed the acceptance by it of certain conditions imposed by the grantor. Although these conditions are commonly set forth in the statute which authorizes the grant, there does not seem to be any reason why further conditions cannot subsequently be attached. Hereafter when a state accepts a federal grant, it will do so on the condition, among others, that its employees in the subsidized activity will not "take any active part in political management or in political campaigns." In answer to the charge that Congress has invaded the reserved powers of the states, it seems sufficient to quote from the opinion of the Supreme Court in the case of *Massachusetts v. Mellon*,<sup>61</sup> in which the constitutionality of the Sheppard-Towner Act was involved: "In the last analysis, the complaint of the plaintiff state is brought to the naked contention that Congress has usurped the reserved powers of the several states by the mere enactment of the statute, though nothing has been done and nothing is to be done without their consent; and it is plain that that question, as it is thus presented, is political and not judicial in character, and therefore is not a matter which admits of the exercise of the judicial power."

L. V. HOWARD.

*University of Maryland.*

<sup>61</sup> 262 U. S. 447 (1923).

## PUBLIC ADMINISTRATION

**Executive Leadership and the Growth of Propaganda.** The results which are likely to flow from any political change are extremely difficult to predict. It would have been impossible a generation ago to foresee that the gradual shift, in democratic as well as totalitarian states, of the political center of gravity from the legislature to the executive would create a new instrument of political power. That instrument is official publicity, or, more bluntly, governmental propaganda. It is suggested here that the tremendous growth in the publicity activities of modern governments is a direct consequence of the continued absorption by the executive of a larger degree of legislative initiative and power. Indeed, it seems highly probable that the development of the administrative bureaucracy as a source of policy and law will result, if it has not already done so, in making propaganda an indispensable instrument of government, with profound implications for traditional democratic processes.

In order to see why such an apparently unrelated consequence should follow from the growth of executive power, it is necessary briefly to recall the traditional understandings which have characterized government by consent.<sup>1</sup> The orthodox view of democratic processes made all branches of government, and the legislature in particular, agents for giving expression to the "will of the people." The original impulse toward legislative change presumably grew out of the very conditions under which people lived. That impulse then passed from private to public discussion, through the maneuvering of pressure groups, through party advocacy and opposition, emerging upon the statute-books after the final hazards of management and debate in the legislature.

Applying refinements of analysis and measurement, students of public opinion have recently taught us that this democratic process was always more intricate than had been supposed. Yet most thoughtful students of American government have been willing to admit that, intricate and difficult to define as it is, "popular government" was not a meaningless phrase. It meant that government was a servant, which, with some allowance for misunderstanding and occasionally even fraud, did as it was told, and that it undertook little or nothing which had not been thoroughly discussed in the press and on the hustings. This was the process by which the income tax was imposed, by which woman's suffrage was adopted and prohibition was enacted and repealed. The establishment of the Federal Reserve system climaxed years of debate about the shortcomings of the banks and the monetary system. The anti-trust laws, the direct election of senators, the early farm credit system were put on the statute-books

<sup>1</sup> These conventions of government by consent have been excellently crystallized in E. P. Herring, *The Politics of Democracy*, Chaps. 20, 21.

after years of public and legislative discussion. The legislative impulse grew literally from the grass roots.

No one would deny that this familiar, slow, democratic process has been materially modified. It is scarcely too strong to say that today the government leads and the people follow; and by government is meant, as all would agree, the executive, or the administrative bureaucracy. This is not to say that executive leadership is new or uncommon in American politics. The strong presidents have all been spirited leaders in legislation. Yet never before in peace-time has there been the degree of legislative direction from administrative quarters that the last few years has brought. The quiet acceptance of the lists of "must" legislation has become a symbol of congressional dependence upon administrative guidance.

Many of the principal acts which intimately affect the lives of the American people have been passed without widespread public discussion, indeed without extensive congressional acquaintance, except possibly in committees. Such measures as the A.A.A. and its successor, the Soil Conservation Act, the Inflation Act and the Gold Clause Repeal, the Home Owners' Loan Act and the measures establishing the U. S. Housing Administration, the Tennessee Valley and Rural Electrification Authorities, came with such suddenness that it can hardly be claimed that they followed the traditional pattern of legislation in origin or adoption.

The President's Committee on Administrative Management has supplied data showing the extent of the legislative initiative of the administrative agencies: "Out of the total of 429 public acts exclusive of appropriation acts in the first session of the 74th Congress (1935), 270 referred to the organization or functioning of administrative departments. In the second session of that Congress (1936), there were 156 acts of this character. There is little doubt that the great majority of these acts originated, directly or indirectly, in the departments concerned. Many other bills promoted by the departments did not become law, and departments expressed opinions upon and engaged in other legislative activities in relation to many bills they did not initiate."<sup>2</sup>

Yet the mere number of legislative acts which the administrative agencies have initiated or steered through Congress is not the most accurate measure of the development of government by the executive. A far more important fact is the gradual emergence of the executive as a source of law in its own right. Legislation has become more general and permissive in character, delegating wide areas of discretion to administrators and allowing them to fill in the bare outlines of legislatively-determined policy with administrative orders and regulations which have the force of law. As long ago as 1936, there were 115 federal agencies which, under 964

<sup>2</sup> E. E. Witte, *The Preparation of Proposed Legislative Measures by Administrative Departments* (1937), p. 49.

statutory provisions and 71 executive orders, were issuing rules and regulations affecting the public. These delegations of authority have become so broad that they permit the performance by administrative order of acts, such as the chartering of corporations, which have hitherto been done only by direct legislation.<sup>3</sup> The number of presidential executive orders has now reached 8,673,<sup>4</sup> but it is significant that President Roosevelt has issued such orders at a rate more than twice that of his most prolific predecessor. The question may legitimately be raised whether the influence and authority of the executive on legislation and in the issuance of regulations having the force of law has not reached a point where the traditional understandings of government by consent have been altered.

Yet no sinister explanations are necessary to account for this transfer of legislative initiative and power. It is the outcome of political facts that are generally known and understood. One of these is that the presidency is in some ways actually more representative of the people as a whole than is Congress itself. Congress is too often a group of warring partisan representatives of sections, occupations, and classes, unable to find the common-denominators of national unity and interest. It is then that we turn hopefully to the president to compose differences and to formulate policies. A second fact is the character of President Roosevelt's administrations. It was inevitable that power should drift into the hands of men who, since 1933, have been exuberant in their eagerness to try out new ideas. The "brain-trust" has had the self-confidence of intellectuals trained in the management of words, and who believe that words correspond to things. They have been enormously fertile in the invention of legislation or of ways to circumvent it. Sheer zeal is an important factor in the location of power.

A third fact, however, quite aside from these explanations, would of itself account for the development of the legislative power of the executive. It is that the things which governments currently must do are too complicated or require too much speed to be amenable to the slow processes of public, or even legislative, debate. "Emergency" is a word which has lost its terrors. In fact, "emergencies" have become "normal" and are now provided for in advance.<sup>5</sup> Power and freedom to act are today paramount considerations in government, especially in the management of

<sup>3</sup> The chartering of the Surplus Commodity Corporation by the Secretary of Agriculture and the inauguration of the Food Stamp Plan by administrative order are examples. <sup>4</sup> Feb. 8, 1941.

<sup>5</sup> For example, the executive order establishing the divisions of the Executive Office of the President provides that there shall be established "in the event of a national emergency, or threat of a national emergency, such office for emergency management as the President shall determine." Executive Order, No. 8248, Sept. 9, 1939.

foreign affairs. A new country is invaded, a ship is sunk in neutral waters, a conversation takes place in London or Berlin, and a new set of diplomatic complexities emerges overnight. Embargoes must be declared, credits frozen or released, or new defense measures taken. Readjustment by congressional action of even domestic policies under such circumstances is too slow to be feasible, and Congress has recognized that fact by authorizing the president to act alone in a large number of contingencies.

It would be hopeless to try to outline the boundaries of presidential discretion, but the following is a partial list of the more important things which the president may do without further authorization by or consultation with Congress: change the value of the dollar; issue up to three billion dollars in paper currency; regulate farm or work relief; restrict foreign trade, exchange, and travel; raise or lower tariffs; suspend the eight-hour day for federal employees; control the radio; suspend sugar quotas; ban the export of certain raw materials; forbid the transfer of ships to foreign registry; buy military supplies without bids; seize certain power plants and dams; take over non-coöperating factories for defense. In some of these matters, the limits of presidential discretion are set; in others, he can act only when certain conditions prevail, although he is the judge as to when such conditions exist; in still others, he is given the widest possible choice of ways and means of putting his power into effect.<sup>9</sup>

From this review, it is now possible to show why the transfer of legislative initiative and authority to the executive branch of the government makes inevitable the development of governmental publicity, or more bluntly propaganda activities. The logic of the situation is this. Under all forms of government, the support, or at least the passive approval, of the people for major governmental policies is highly desirable. In democracies, it is assumed that governments cannot or dare not act without it. In dictatorships, it is scarcely less essential, although such approval may be obtained by distasteful methods. In the United States, we have currently equipped the executive branch of the government with enormous powers which it can exercise without further notice or approval. Is it reasonable to suppose that a government to which popular support or acquiescence is indispensable would initiate actions unless it is also equipped with the means of rallying support for them? In short, if the executive must take the risk of acting first and seeking the support of the people afterward, it must have—in fact, it will make sure that it does have—the means of

<sup>9</sup> For a general survey of legislation showing the nature and range of delegated authority to administrative officers, perhaps the most useful brief source is: *Summary of Major Legislation, and of Federal Court Decisions on its Constitutionality, 1933-1940*. Sen. Doc. 187, 76th Cong., 3rd Sess., 1940.

persuading people to approve its actions. This is the chain of political relations which, under a governmental system of executive initiative, makes propaganda an indispensable instrument of government.

In order that this should not be dismissed as mere scholasticism, a number of actual political situations should be examined. The N.R.A., memory though it is, supplies the most spectacular illustration of the relation between an administratively initiated measure and the indispensability of propaganda. It will be recalled that the original bill was drafted almost entirely outside of Congress. Introduced May 17, 1933, it was in the House committee less than a week and was reported out with a recommended debate limit of five hours. The Senate took more time, but its contributions to the bill left the essential features unaltered. The N.R.A. remained a bill conceived and largely matured in administrative bureaus.<sup>7</sup>

The administration of the N.R.A. was a staggering task. Although enacted in the most favorable psychological atmosphere, the suddenness of its appearance, the complexity of code-making and enforcement, and the drastic readjustments in wages and employment which the plan imposed left the public uncertain and bewildered. Hugh Johnson has stated the administrative dilemma very clearly: "If we moved out to compel codes, all of industry would feel that every worth-while thing that has characterized our institutions had gone by the board in a dictatorship far worse than that in any European country, including Russia. . . . It is possible that 7-a and the hours-and-wages provisions could have been rammed down the throat of industry by statutory or executive decree, as some people seem to wish. But I don't believe it. If it had been attempted, it would have required the full force of the federal power, judicial, military, and executive, to do it, and I might as well say here that, if it had

<sup>7</sup> Charles Frederick Roos, *N.R.A. Economic Planning* (1937), pp. 50-54. "Within less than a month after the recovery bill had been introduced, Congress had passed and the President had signed what he termed 'probably . . . the most important and far-reaching legislation ever enacted by the American Congress'." *Ibid.*, p. 53. That there were those who were conscious of the inadequate popular and legislative consideration of the bill can be seen from the following letter from Alexander Sachs to General Hugh Johnson, May 20, 1933: "I submit it is not too late to re-think or to think for the first time what is really needed and how it can practically be secured. I fear, and fear profoundly, that the present device that has emerged from the many authors who have not reached a common basis is too intellectually muddled to produce codes that would work in practice or stand up in the courts when challenged. The danger is that the codes that will be rushed through will be like economic nebulae or chaos. . . . There is no substitute for hard thought and coördinated competence, for rigorous determination of objectives and critical construction; without these, wholesale planning is worse than no planning." *Ibid.*, p. 54.



been attempted in that fashion, I would have been on the other side of the argument."<sup>8</sup>

Propaganda was the only alternative. The Blue Eagle became a symbol under which organized social compulsion imposed both private and governmental boycott on non-complying employers. The non-complier was made a "chiseler" regardless of the reasons for his non-compliance. Patriotism and humanitarianism were enlisted under the Blue Eagle. Those not under the banner faced serious financial and social consequences. Parades and bands became instruments of both popular education and law enforcement, because it was necessary to build swiftly, through emotional appeal, a measure of popular support which would have taken immensely longer to create by methods of public discussion, if, indeed, it could have been created at all.

Among current agencies whose programs illustrate the necessary relation between administratively-fostered policies and the use of propaganda, the Department of Agriculture supplies the best example. The last few years have seen in the swift nationalization of agriculture the inauguration of policies which have been amazing for their magnitude, ingenuity, and economic boldness. These policies have been too intricate to have had a spontaneously popular origin, and too revolutionary economically to have been the outgrowth of slower natural readjustments. In short, the agricultural program has been a "government" program, and the Department, having decided upon a national policy, set out to win public approval for it.<sup>9</sup> Secretary Wallace candidly stated this fact when he said: "It would be unfair not to point out also . . . that a steadfast national allegiance to any fixed course, international or intermediate, also requires a certain degree of regimented opinion."<sup>10</sup>

While no extensive review of the publicity activities of the Department

<sup>8</sup> "The Blue Eagle from Egg to Earth," *Saturday Evening Post*, Feb. 2, 1935, p. 84.

<sup>9</sup> While the Department has been skillful in its publicity, it has never tried to conceal the fact that its policies were administratively conceived and that it intended to secure their adoption. The following statements are representative of the general attitude. "Even before the A.A.A. was passed, the Department was laying the groundwork for an intensive, nation-wide program of education in economic planning." *Report of the Director of Information*, 1933, p. 1. "It [Departmental publicity] is propaganda in the sense that the A.A.A., with full respect for the facts, still gives to the farmers an extensive presentation of one course of action as being more desirable than others. The process involves picking and choosing as between sets of facts, placing more emphasis upon some than upon others according to a judgment of their relative importance. Thus it does involve a departure from the objective attitude. It involves active support of a positive plan to improve the economic condition of agriculture." *Agricultural Adjustment*, 1937-38, pp. 238-239.

<sup>10</sup> *America Must Choose*, p. 32.

could possibly be undertaken here, a few facts may serve to indicate their magnitude. Over 32,000,000 copies of publications were distributed during 1940—an increase of more than 6,000,000 over the previous year. In addition, the Department's duplicating plant issued more than 150,000,000 pages of material.<sup>11</sup> The press service issued 1,531 press releases and copies of 523 reports; 267,000 photographs were made. It also sent 280 stories to extension editors as a part of its services, and the weekly Clip Sheet was sent to most of the newspapers of the country. Department workers also prepared 2,372 articles for papers, scholarly and scientific journals, and books.

While none of the arts of publicity is neglected by the Department, the greatest development has been in radio. The National Farm and Home Hour has been carried by 90 stations of the N.B.C.; Farm Flashes was carried by 401 stations, and 201 broadcast Homemakers' Chats. These programs are used to bring useful information to listeners and to report and dramatize the work of the Department. Radio specialists are now employed to train county agents in the art of broadcasting, and broadcasting is being extended to local communities. The motion picture is a difficult medium of publicity, but it has a definite place in the program. The Department has a separate division for the production of motion pictures, and makes them for other agencies also. Of 533 government films available in 1936, 307 had been made in the Department of Agriculture. All were available for free distribution. Of these films, "The Plow that Broke the Plains" is the most famous and had been exhibited to more than 18,000,000 people by 1936. It cost the Resettlement Administration \$40,000 to produce and distribute, including the cost of return postage from commercial exhibitors.<sup>12</sup>

<sup>11</sup> It is interesting to notice what is said in the *Annual Report of the Public Printer*, 1938, p. 21, regarding these departmental duplicating plants. "I reported to Congress last year that we were making every effort to limit the work done in the departments on their so-called duplicating equipment because we considered it a direct violation of the law which requires all printing be done at the Government Printing Office. Through the department printing plants, the departments are enabled to put out more printing than that authorized by Congress, using appropriations made for purposes other than printing to operate their so-called duplicating plants."

<sup>12</sup> It is virtually impossible to get a complete account of the publicity activities of a single agency, much less of the federal government as a whole. This is no doubt due to the magnitude, variety, and recency of such activities and to the lack of clear accounting categories for such work. Another difficulty may be due to a statute, still unrepealed [38 Stat. L. 212, Oct. 22, 1913] which forbids the hiring of publicity experts. Some agencies have been specifically authorized by law to carry on informational services, but the shadow of this act still hangs over much of the publicity work done by governmental organizations.

The best study of the publicity work of the federal government as a whole is that

This brief review of the publicity work of the Department of Agriculture is not an effort to distinguish it from any other agency engaged in administering policies which are largely self-initiated. It is meant merely to show what the officials of the Department would freely admit—that programs administratively originated cannot possibly succeed without abundant means for persuading the public to support them. If a list were made of these federal agencies which have the most active and elaborate publicity organizations, it would include the following:<sup>13</sup> Department of Agriculture, Farm Credit Administration, Federal Housing Administration, Resettlement Administration, Rural Electrification Administration, Works Progress Administration, National Bituminous Coal Commission, Department of Interior, and Social Security Board.

There is one unifying characteristic of this group. Without exception, it is composed of new agencies (or of old ones with new duties) with programs which must be *promoted and explained* before they can be administered. In virtually every instance, these agencies have had to win popular approval, or at least acquiescence, for policies which the public knew little or nothing about until they sprang into being as the result of administratively-inspired legislation or of executive order.

It can hardly be denied that persuasion, or, more bluntly, propaganda, has become a regular function of government.<sup>14</sup> Publicity experts are be-

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by James L. McCamy, *Government Publicity* (Chicago, 1939). There are some articles of importance in various numbers of the *Public Opinion Quarterly*. Most of the data cited here with reference to the Department of Agriculture are taken from the *Senate Committee Report on Library, Information and Statistical Services*, 75th Cong., 1st Sess., June, 1937, and *Reports of the Director of Information, the Department of Agriculture*, 1932 ff. There is an interesting article by T. Swann Harding, "The Informational Techniques of the Department of Agriculture," in *Public Opinion Quarterly*, Vol. 1, pp. 83-96, Jan., 1937, and another by Alfred D. Steadman, "Public Information and the Preservation of Democracy," in the *Agricultural Yearbook for 1940*, pp. 1075-1080. *The Hearings on Agricultural Appropriations for 1940* contains a review of the Department's publicity work, pp. 116 ff.

<sup>13</sup> Cf. James L. McCamy, "Variety in the Growth of Federal Publicity," *Public Opinion Quarterly*, Apr., 1939, p. 389. This leaves out of account the publicity work of the various defense commissions.

<sup>14</sup> Based upon his experiences as an administrator, the observations of James M. Landis, in *The Administrative Process*, pp. 62-63, are of particular interest: "One factor that has received little attention from students of government is the need for the administration to give adequate and effective publicity to its achievements. In the field of policy determination, effective publicizing of the policy and of the reasons that underlie it is essential. Only in this way can policy achieve the active or, at least, the tacit acceptance of the industrial group affected. . . . Thus, if the prevailing political atmosphere is dominated by the 'big stick,' the government of the day expects of the administrative not merely heat and vigor but even more a show of heat and vigor. The big stick must be shaken by many hands, legislative, executive, and administrative. Hence the initiation of administrative action may be preceded by all the fanfare that public relations' counsel can muster."

coming as essential as lawyers and administrators. They are the skilled craftsmen who make programs successful by selecting the symbols, and even the words, which will be most effective in winning popular support. They decide what are "good" words or "bad" words, and instruct the the bureaus in their use.<sup>15</sup> In their hands, governmental reports cease to be dreary compilations and become endowed with "themes" to be emphasized in the public mind. The Department of Agriculture now issues its annual report under such titles as *The Soil and Men*, or *Food and Life*, while the report of the T.V.A. devotes itself to a discussion of the use of natural resources in a democracy. The picture of a smiling baby on the cover of its magazine is as deliberate a part of the Rural Electrification Administration's campaign for support as is a page of statistics. All this results from the necessities by which the government must act before foundations are formed in popular understanding or desire.

In the long run, perhaps the most serious consequence of this rearrangement of political powers is the destruction of what the political scientist calls the "neutrality" of the bureaucracy. That principle is one of the strongest barriers against social conflict. It is an expression of faith that the administration of the law will be unaffected by the heat and partisanship which its enactment involved. The bureaucracy is charged with the responsibility for taking care "that the laws shall be faithfully executed," with impartiality, without fear or favor. To that end, it is made permanent, anonymous, and politically non-responsible. But suppose the bureaucracy becomes suffused with a sense of mission, that it becomes responsible for the administration of an act of which it is also the sole originator, in the way, for example, in which the Department of Agriculture is responsible for the Food Stamp Plan.<sup>16</sup>

No agency, after it has originated a policy, can afford to be neutral in its administration. It is no longer an agent, it is a principal. Its first object must be to make the program "successful," for it has acquired a stake in the outcome. Its first step must be to win approval and support, and controlled publicity thus becomes an indispensable instrument for its administrative operations. This instrument is easy to forge, for, as the originator as well as the administrator of policy, the agency possesses a virtual

<sup>15</sup> Consider the implications of the title of an article by Charles S. Ascher, "Federal Housing Symbols Are Tiresome," *Public Opinion Quarterly*, Vol. 1, pp. 110-112 (Jan., 1937). The anxieties of the publicity experts are amusingly illustrated by the care with which, in an age of "alphabetical agencies," the Social Security Board avoids the use of its initials because of the similarity to a popular American epithet. See McCamy, *op. cit.*, p. 153.

<sup>16</sup> The observations of the Special Committee on Administrative Law of the American Bar Association are interesting. "In a democracy, legislation is bound to be a partisan process. It is so in Congress, and there is no occasion to be shocked that it is so of officials in the executive departments and the independent agencies to which legislative powers have been delegated." *Proceedings*, 1936, p. 735.

monopoly of information. It is unrealistic to expect it voluntarily to bring forward information detrimental to its program. Indeed, tests of agreement with policy may be made the basis of hiring personnel in even subordinate positions, as it certainly is made the basis of advancement and promotion. The T.V.A. has boldly required by law what is merely tacitly required in many other administrative agencies—that its employees shall “believe in the feasibility of its program.”

One other factor which has made propaganda an essential instrument of government is the fact that the success of many current governmental policies depends upon the existence of attitudes and emotions which only propagandist appeals can arouse. This was particularly true of a number of the earlier efforts to combat the depression. The N.R.A. as economics, minus Blue Eagle patriotism, could never have been successful. The history of the F.H.A. will serve to illustrate the principle more currently. The F.H.A. was established in 1934 to combat the depression—to set in circulation vast sums of money and to start a movement of men and materials. Yet the program, on its merits, ran counter to the economic knowledge and impulses of the hard-pressed people to whom it was addressed. The government was inviting those whose current inclination was to hold on to every dollar they could get to add a new guest room or to put a new roof on the house. The reaction to the invitation was exactly what might have been expected. The reasoning that savings should be spent as an investment sure to bring the return of prosperity was not convincing. People thought it was foolish to do things, under the worst circumstances, which they had not done under much better circumstances. The F.H.A. was stillborn, and remained so for two years.

The publicity activities of the F.H.A. were then altered. It employed artists to draw pictures of “dream houses.” It supplied over ten thousand mats to newspapers to use in soliciting advertisements from supply dealers, mats which showed lovely chromium and glass bathrooms, laborless, dustless furnaces, and leisurely people enjoying basement recreation rooms. People were shown rising with perfectly combed hair and smiling faces from government-added sleeping porches. Landscaped terraces with reclining lawn chairs became symbols of gracious living. The success of the F.H.A. program grew rapidly. The political implication is that a governmental policy of this kind requires an emotional, just as much as a legal and financial, basis. To provide it, the government must be prepared to utilize all the arts of propaganda.

The most casual survey of current activities makes this truth abundantly plain. The Resettlement Administration has put its program before the public with a marvelous collection of art photographs. Gaunt sharecroppers with their large families of children living in poverty-stricken one-room cabins have begun to haunt the minds and lie on the consciences of the American people. The film “The River” may give an impression actually

false as to the need and urgency of a flood-control program for soil conservation, but it has aroused attention and feeling that no amount of factual data could have done. W.P.A. makes use of every device of publicity—exhibits, dramas, radio programs, moving pictures—to arouse the sympathy of a public reluctant to support it.

That propaganda has now become an essential instrument of government is, it is claimed, an effect of a shift of power in our political system. When the nature of the policy or the character of the circumstances requires that the executive take the initiative in inaugurating policies, government by consent becomes merely a process by which a government which has been compelled to act manufactures consent for what it has done. Our old ideal of government administration as a servant, bowing to the will of the people in so far as that will could be discovered, is being drastically modified.

Perhaps one of the less apparent effects of this transformation in our political processes is a peculiar, widespread sense of political fatalism. The popular consciousness of being in control has seriously deteriorated. Polls recently showed that while 90 per cent of the public opposed the entrance of the United States into the war, an overwhelming majority believed that we would enter it. In this is a vague realization that the executive has been given enormous powers, that it can act when it sees fit, and that, having acted, there will be little choice save to accept its action and the explanation given for it.

It would be natural to suppose that, with its antipathy toward propaganda, the American public would be alarmed if it realized this drift of affairs. Two things prevent the growth of such alarm. The first is the sense of fatalism already mentioned—the feeling that the logic of events leaves virtually no political choices. The second is the discovery already made by many other peoples that living under the guidance of propaganda is not nearly so fearful in fact as it is in prospect or in retrospect. Most peoples who are controlled by propaganda never realize the extent to which they are so dominated. Only a fraction of them are genuinely unhappy about it. Actually, it is almost impossible to convince people that they *are* the victims of propaganda. It is simply the old maxim over again: what you don't know doesn't hurt you. Retrospect seems ample time for reflection.

Looked at from the long-term view, the elevation of propaganda to the position of an essential instrumentality of government ought not to be subjected to moral judgment. It is not so much a matter of choice as it is the inevitable creation of a new instrument of power, necessary and proper to carry into execution new functions of government. As in the case of every other political power, experience may show that it is both beneficial and dangerous.

HAROLD W. STOKE.

*University of Wisconsin.*

**Final Report of the Attorney General's Committee on Administrative Procedure.**<sup>1</sup> What is undoubtedly the most thorough and comprehensive study ever made of Federal administrative procedure was completed with the submission to the Attorney General, in a letter dated January 22, 1941, of the final report of the Committee named. In its investigation and report, the Committee confined its attention to those Federal agencies that substantially affect private interests by their powers of rule-making and adjudication. To the study of their procedures, it assigned a staff of lawyer-investigators, which produced 27 mimeographed monographs, 13 of which have been printed as Sen. Doc. No. 186, 76th Cong., 3d Sess. In its interim report of January 31, 1940, the Committee thus described the methods being employed in the preparation of these monographic studies: "They have involved extended interviews with officials and employees of the agencies involved, with members of the public affected, and with attorneys who have represented clients before these agencies. Members of the Committee's staff have attended numerous hearings and other administrative proceedings as observers, and have closely examined the files of the agencies to discover the methods utilized in disposing of matters arising under the various statutes and regulations. Upon the completion of these investigations, the staff has prepared for the study of the Committee a preliminary report upon each agency, discussing in detail its administrative procedures. The report has been given to the officers of the affected agency for their consideration and comment. Thereafter, the full Committee has met with the agency's officers to discuss with them the facts and problems disclosed by the report." (*Final Report*, pp. 254-255). The Committee held public hearings in June and July, 1940. In Chapter IX of its final report, it presents recommendations concerning a number of the individual agencies studied; and in Appendices B through M, it summarizes data collected on significant topics.

Conclusions and recommendations made by so distinguished a group upon the basis of so rich a background are bound to carry weight. This is so, at least, with what is presented as the area of common agreement.

<sup>1</sup> *Final Report of the Attorney General's Committee on Administrative Procedure*. (Washington: Government Printing Office. 1941. Pp. 474. \$0.50. Also Sen. Doc. No. 8, 77th Cong., 1st Sess.) The committee was appointed on February 23, 1939. James W. Morris was later succeeded as chairman by Dean Acheson; and the Committee is commonly called the Acheson Committee. Its director was Walter Gellhorn, of the Columbia Law School, a leading authority on the law of administrative procedure. The Final Report was signed by these three and nine others: one judge (D. Lawrence Groner, chief justice of the Court of Appeals for the District of Columbia), two law deans (Lloyd K. Garrison of Wisconsin and E. Blythe Stason of Michigan), three law professors (Henry M. Hart of Harvard, Harry Shulman of Yale, and Ralph F. Fuchs of Washington University), and three other distinguished attorneys of varied experience (Francis Biddle, Carl McFarland, and Arthur T. Vanderbilt).

For it must be said at once that three of the twelve members, while accepting the major outlines of the majority report, do not regard its legislative proposals as adequate, and hence submit additional views and a proposed code of their own; and a fourth member, Chief Justice Croner, joins the other three, but considering even their code to be inadequate, summarizes recommendations that go still further.

The majority report will be examined first. After a brief Introduction, Chapter I discusses "The Origins, Development, and Characteristics of the Administrative Process." The characteristics emphasized as bearing upon procedure are size, specialization, responsibility for results, and variety of administrative duties. Size, in terms of volume of business, is clearly related to informal settlement. Responsibility for results precludes a wholly negative attitude toward issues. The variety of duties renders generalization in description difficult, and generalization in prescription still more difficult. The majority is thus on guard against over-generalization; though it asserts that to proceed toward greater uniformity is both desirable and possible. The consequence of the characteristics listed which is emphasized at this point, however, is the need for delegation. The work of an agency must, in short, be largely the work of its staff, under the direction and supervision of the agency head or heads.

Chapter II deals with "Administrative Information." In the decision of individual cases, written opinions are shown to be highly desirable. The *Federal Register* and the *Code of Federal Regulations* are far from containing all the information that should be made available. It is proposed to require by law that every agency make available and currently maintain a statement of its internal organization in so far as it may affect the public, and that all policies, interpretations of law (where adopted), rules, regulations, procedures (formal and informal), prescribed forms, and instructions for reports shall be made available. The law should also make a general but non-mandatory authorization of binding declaratory rulings.

Chapter III is entitled "Informal Methods of Adjudication." "The great bulk of administrative decisions are made informally and by mutual consent." The Committee gives an invaluable analysis of the subject, but finds that by statute or administrative interpretation thereof unnecessary restrictions are sometimes placed upon the use of informal methods.

Formal adjudication is examined in Chapters IV and V, from the standpoints first of organization and then of procedure. What is needed is not that an agency made responsible for results shall be indifferent to results, but that the agency consider fairly the facts in relation to public policy. The divorce of hearing from decision means that the hearing degenerates and the decision is anonymous. So at this point the Committee makes what is probably its major recommendation. Building on the trial



examiner idea, it would have in every agency hearing commissioners nominated by the agency and appointed or rejected by the Office of Federal Administrative Procedure, later to be described. They are to have substantial salaries established by law, and seven-year terms. Removal is to be only for malfeasance or neglectful or inefficient performance of duty, upon charges advanced by the agency or by the Attorney General upon private complaint, and after hearing by an independent trial board. This board is to be the three members of the Office or its director and two others designated by it. Agencies with five or more hearing commissioners are to have a chief hearing commissioner to supervise the hearing process and assign cases. Every case not heard by agency heads is to be heard by one or more hearing commissioners. They are to preside at pre-hearing conferences and hearings, with power to conduct the hearing and make not only findings of fact and of law but also decisions that are to be final and binding in the absence of timely appeal to or review on its own motion by the agency head. Upon certification by the hearing commissioner of questions of law, the agency head may give binding instructions or call up the record. If upon appeal the agency head makes findings that differ materially from those of the hearing commissioner, it shall explain the grounds in its decision. Careful provision is made for disqualification of hearing commissioners; and opportunity to present argument is safeguarded. The purpose of the plan is to effect internal separation of prosecution and adjudication in cases where the agency head does not itself hear and decide, and subject to appeal to it.

The majority emphasizes the importance, after formal action is begun, of pre-hearing conferences and stipulations of fact. It discusses standards of fair procedure, but opposes the enactment of an elaborate code.

"Judicial Review of Administrative Adjudication" is the subject of Chapter VI. It is rarely available to compel effective enforcement by administrators. Its function is to check excess and abuse of power in derogation of private right. Even here, it has varying degrees of effectiveness. It is to check, not to supplant, administrative action. If the court is to decide which way the evidence preponderates, the agency becomes merely a medium for transmitting the evidence to the court. The majority concludes that Congress can act effectively only with reference to particular situations, and not by general legislation for all agencies and all types of determinations.

Chapter VIII treats "Procedure in Administrative Rule-Making." The idea is rejected that because rule-making is a legislative process, its procedure should be patterned after that of legislatures. For administrative agencies are not ordinarily representative bodies. Participation of affected groups should be more widely used. Rule-making hearings are a product of the present century. The Committee approves their use where business

enterprise is directly affected in its financial aspects, but would not make the requirement invariable. To treat the hearing as adversary may be wise in some situations. Of recent statutes requiring procedures hitherto associated only with adjudication, the Committee remarks that they may produce justifying advantages if they do not create governmental paralysis. Such statutes also provide detailed judicial review. The Committee's discussion shows that this is unsound; but while saying the general application of this sort of review of rule-making is not recommended, the Committee cautiously remarks that the operation of these statutes should be watched.

Deferred effectiveness of regulations until a specified period has elapsed after their announcement is approved. It is recommended that the law defer effectiveness for 45 days after initial publication in the *Federal Register*, but with power in the agency to shorten or dispense with this delay by certification published with the regulation. The Committee definitely does not advocate a general requirement that regulations be laid before Congress after the manner of English practice or of the Reorganization Act. It does propose that the law expressly state the right of any interested person to petition for the making or amendment of a rule, and requires each agency to report annually to Congress the regulations made during the past year, together with a summary of petitions from outside that were rejected and the reasons therefor.

The proposed Office of Federal Administrative Procedure is described in Chapter VIII. Such a permanent organization was suggested by the need for dissimilarities and the possibilities for greater uniformity, together with the absence in many agencies of information or interest concerning the procedures of other agencies. The Office is to be composed of a justice of the United States Court of Appeals for the District of Columbia designated by its chief justice, the director of the Administrative Office of the United States Courts, and a director of Federal Administrative Procedure to be appointed by the president and Senate for the term of seven years at an annual salary of \$10,000. Each agency on a list to be prepared by the director shall designate an adviser to the director, and shall furnish him all information he may request and all possible assistance. He is to conduct inquiries, seek to facilitate the uniform adoption, where feasible, of the most satisfactory practices, receive complaints and make recommendations based thereon, and perform with the other members of the Office its duties relating to the appointment and removal of hearing commissioners. He is to be charged specifically with the study of several problems suggested by the Committee's investigations.

These and other recommendations are included in a bill submitted by the majority. Messrs. McFarland, Stason, and Vanderbilt, however, claim that this bill falls short with respect to the separation of the prose-

cuting and judicial functions, the scope and practice of judicial review, and the need for a legislative code of fair procedure. With respect to separation, the essential demand is that adjudication be vested in an independent group. Note is taken of the plan of the President's Committee on Administrative Management. Complete separation is normally to be preferred where there are factual issues between the government and private parties, and would divide responsibility no more than it is now divided between the Department of Justice and the courts. Can there be a practical separation when prosecution and adjudication are both subject to one ultimate authority?

Separation is intimately related to judicial review. Present standards of review are haphazard and uncertain. They are unsatisfactory because arrived at by case-to-case decision. Congress should prescribe both the availability and the scope of review. It should classify types of cases and provide special degrees of review for each. Meanwhile, some general provisions are proposed for enactment. The minority is particularly disturbed by one interpretation of the substantial-evidence rule to the effect that if substantial evidence is found anywhere in the record, the court must sustain the finding, no matter how heavily countervailing evidence may preponderate. It insists that findings of fact should be set aside if clearly contrary to the manifest weight of the evidence. It proposes to enact that, regardless of the form of action, the reviewing court shall decide all relevant questions of findings, inferences, or conclusions of fact unsupported, upon the whole record, by substantial evidence.

The minority also insists upon the need for a legislative statement of standards of fair procedure. To take care of this and other inadequacies of the majority's proposed bill, it appends a Federal Code of Administrative Procedure. The departures from and additions to the provisions of the majority bill that are made in this code are too numerous even for summary here. Suffice it to say that the effort is made further to strengthen internal separation of functions and to judicialize formal administrative adjudication, as well as to generalize about judicial review. The code has explanatory annotations that point out the glaring defects of the Logan-Walter Bill. Its three proponents say, however, that they are not suggesting its enactment without hearing all agencies and considering all points of view.

The majority describes its bill as containing those of its principal recommendations that it believes susceptible of legislative treatment. It explains that it has become convinced that much of the minority's code is unrelated to facts of more than isolated incidence, and that many of its sections are inapplicable in practice to many agencies. It considers its report a better guide to administrators than the code. It points out that such a legislative effort has one of two results. If its principles are flexible, they

must be merely hortatory, or must command the obvious in situations where disobedience would vitiate administrative action without a code. On the other hand, if specific requirements are attempted, in the absence of exhaustive study, a code catches far more than was intended, and its effects are unpredictable and may be harmful. The minority code's provision for presidential suspension of its requirements upon the reasoned application of any agency and of the Office is unsatisfactory in that it forces the president to make findings the Committee is now unprepared to make.

Finally come the additional views and recommendations of Chief Justice Groner. While joining in the recommendations of the minority, he considers both the majority bill and the minority code inadequate. What, he asks, is a plan at once workable and fair? Unrestricted power of review by a wholly independent body like the Board of Tax Appeals would most likely insure impartiality; but a similar plan earlier advocated by Senator Logan was abandoned. Judicial review might be expanded to include review in the light of the weight of the evidence; but this goes against the present trend. So he resorts to recommending the greatest possible independence for the hearing commissioners. They should be appointed by the Office of Federal Administrative Procedure wholly on its own responsibility, should receive their salaries from the Office and not the agency, should be assigned cases by the Office, and should be answerable to the Office alone. Whenever on appeal to it an agency rejects findings of fact of a hearing commissioner, such action should be subject to judicial review in the light of the court's own impressions of the weight of the evidence. The approach of Chief Justice Groner is well marked by the following quoted words from his letter to the Attorney General: "The correct decision of this question is one of great importance. It should, in my opinion, be considered by Congress in the light of the real and true purposes which the founders of our government sought to achieve for themselves and their posterity. These were free action—free enterprise—free competition."

JAMES HART.

*University of Virginia.*

**Classification in the Federal Service, and the Emergency. *The Problem.*** One of the most important government personnel problems at the present time is the increasing difficulty of securing high grade new employees for government jobs, and of retaining experienced civil servants in the face of higher salary and wage schedules in private industry. Ordinarily this would not be a particularly sore spot, because of certain advantages of government employment which might offset lower pay. However, at the present time, and especially in defense agencies such as the War and Navy

Departments, it is necessary that the best available personnel be secured for key positions so that our defense preparations may be completed as expeditiously as possible.

Although the various bureaus of the War and Navy Departments are directed by army and navy officers, most of the personnel is civilian. Practically all of the clerical work and much of the legal, engineering, and other technical work involved in writing specifications for supplies and preparing contracts is performed by civilians, who must be paid in most cases according to government pay standards established by the Classification Act of 1923 as amended. These standards fix the rate of pay for levels of duties and responsibilities and cannot be changed except by congressional enactment. In private industry, on the other hand, "prevailing rates of wages" are paid for comparable work, and these may vary as the forces of supply and demand interplay. At the present time, the demand for efficient labor of many kinds—stenographers, bookkeepers, engineers, and machinists—exceeds, or is likely to exceed, the available supply, and industrial rates of pay are going up and probably will continue to rise.

As this rise continues, and if government pay does not rise comparably, it will become increasingly hard for the government to secure competent employees, not only because of the obvious financial advantage of higher pay in private industry, but also because the cost of living may be expected to rise also, thus decreasing the amount of goods and services government salaries will buy. Employment in Washington may be especially less attractive since the cost of living promises to rise there more than elsewhere as a result of the huge influx of defense employees.

Not only are "prevailing rates of pay" in government employment necessary for an effective national defense, an efficient democracy, a career service in government, and equity, but industry would benefit directly. At the present time, industry has much to do with government employees, particularly on defense contracts. Low-grade government men, or those with less ability than the men in industry with whom they have to deal, create difficulties in production. Inefficient inspectors and writers of specifications might delay contracts, increase costs to industry, and hamper the defense effort. Clerical inefficiency or technical incompetence at the hub of defense activity can block progress all along the line.

It is quite true that many valuable men and women have come to Washington to aid in defense preparations at financial sacrifice, and there are many others who, out of a sense of loyalty and duty, would not consider leaving their government posts at this time. But thousands of others cannot afford to make this sacrifice. It is these who must be kept on their jobs in Washington and brought to Washington. Pay is an important consideration in doing so.

We can draft men for military service, we can direct materials to national defense purposes by means of priorities control, but we must still rely largely on the price mechanism to distribute the civilian man-power. Static pay-rates in government in the face of rising rates in industry is certainly not the way to direct the best clerical and technical civilian man-power into government positions where badly needed. It should be made clear that it has not been difficult to find employees; but it has not always been easy to obtain the quality desired at government salaries.

If it is agreed that it would be desirable for government pay-rates to approximate more closely rates in private industry, it may be asked, How can government rates be raised? Any attempt to answer the question must give consideration to the operation of the federal classification system under the Classification Acts.

*Operation of the Classification System.* Under the federal classification system, each position falls into one of five services—the professional and scientific service, the sub-professional service, the clerical, administrative, and fiscal service, the custodial service, and the clerical-mechanical service. By way of illustration, engineers fall in the professional service; typists in the clerical, administrative, and fiscal service; assistants to professional men, in the sub-professional service; and janitors fall in the custodial service. The clerical-mechanical service includes only certain positions in the Government Printing Office and the Bureau of Engraving and Printing.

Using the occupation of engineers as an example, an engineer just out of college would perform elementary work and would be classified as in grade P (professional) 1 at \$2,000.<sup>1</sup> Before he could be raised to the next higher grade, P-2 at \$2,600, he would have to perform duties and have responsibilities corresponding to standards which have become established for that grade. The Civil Service Commission retains a staff of “investigators” to see that these standards are maintained throughout the federal service, since it is the purpose of the Classification Acts to establish “equal pay for equal work.” All promotions of this kind must be approved by the commission.

Very few authorities criticize this system, but at the present time, when pay in private industry is rising for comparable work, the system makes it difficult for the government to compete with private industry for the best employees. An illustration may make this problem clear. Suppose the Army Air Corps wants an aeronautical engineer to work on designs for wind tunnels for testing models. They have a man in mind for the job, but must pay him \$5,600 to entice him away from the position in industry

<sup>1</sup> Other levels are P-3 at \$3,200, P-4 at \$3,800, P-5 at \$4,600, P-6 at \$5,600, P-7 at \$6,500, and P-8 at \$8,000. The clerical, administrative, and fiscal service starts at CAF-1 at \$1,260 and rises to CAF-16 at \$9,000 and over.

he now holds. His work would therefore have to be given a rating of P-6. But, before he could be paid this salary, the allocation to P-6 would have to be approved by the Civil Service Commission. Upon investigation of the duties and responsibilities involved in this position, and comparing them with similar positions, the Commission investigator may find that the work corresponds to the standards established in P-5, which pays \$4,600. Since the government can pay only \$4,600, it may be impossible to obtain this badly needed employee.

The same problem would have to be faced if a government employee received a higher offer from private industry. This is not a theoretical problem, but one which is experienced every day in defense agencies, and one that may be expected to arise more frequently if rates of pay in private industry increase while government rates remain fixed. Since positions in the federal service which fall into a recognized trade or craft, such as machinists, are to a large extent exempted from the Classification Acts, the problem posed in this article does not apply to skilled and semi-skilled labor except in some instances, and it might be assumed that "prevailing rates of pay" are paid.

*Solutions.* In considering the possible ways out of this dilemma, little thought has been given to remedies which endanger the classification system, such as the abolishment of the system and the further exemption of positions from classification. Previous to the enactment of the Classification Act in 1923, salaries for the same work in different bureaus in a department and in different departments varied greatly. This contributed to low morale in government employment. It has been the purpose of classification to establish and maintain "equal pay for equal work" throughout the service. It is quite generally agreed that this is a worthy goal and, therefore, consideration is given here only to those suggestions for raising the pay of civil servants which operate within the classification structure.

There are three such possibilities: (1) appropriation of funds by Congress for administrative promotions within grades, (2) raising salaries throughout the government service by amending the salary schedule upward, and (3) easing classification standards upward in important defense agencies, subject to review later. These will be considered in turn.

The classification system provides for promotion within grades for efficiency and long service without regard to the duties or responsibilities of the position. To illustrate, our P-2 \$2,600 engineer might not be given a promotion to grade P-3 at \$3,200 because his duties are not of sufficient difficulty or responsibility, but he may be given administrative or in-grade promotions in turn to \$2,700, \$2,800, \$2,900, \$3,000, \$3,100, and \$3,200 within the P-2 grade.

This type of promotion would be a great help, but funds must first be

appropriated for the purpose by the Congress, and, unfortunately, in the fiscal year 1941 little has been appropriated. An appropriation by Congress for this type of promotion would be of tremendous value in granting higher pay for deserving government employees and keeping others in the federal service. A bill has recently been introduced in the Congress by Representative Ramspeck of Georgia providing for periodic pay increases for government employees with satisfactory efficiency ratings. Another, introduced by Representative Randolph of West Virginia, is similar but does not specify that efficiency ratings must be good. This legislation, if enacted, might help if the first increases were made soon.

Another method of meeting the competition of private industry for valuable employees would be the increase of the entire schedule of salaries in the government service. Two such increases have been made since the passage of the Classification Act in 1923, once in 1928 under the Welch Act, and again in 1930 under the Brookhart Act. Both revised pay schedules upward to meet the increase in salaries in private industry in the boom period. This method is probably the best one for meeting a general rise in the cost of living and a general rise in pay-rates in industry. As yet, this suggestion has not been given much consideration.

A final approach to this personnel problem in defense agencies might be a general easing of classification standards upward, subject to review when the emergency is terminated. For example, if a position is a borderline case, say between a P-4 and P-5, it might be allocated to P-5 as an emergency allocation, to make it easier to secure and to keep the personnel desired during the emergency. Since the Civil Service Commission must approve all allocations, the execution of this policy rests with the Commission, and satisfactory progress is being made along this line.

This will go a long way toward solving the most pressing cases, but for the many rank and file employees who cannot win higher grades, the appropriation of funds for in-grade promotions and the general increase of government pay-schedules would warrant serious consideration if efficient employees are to be retained and morale is to be maintained in the face of a rising cost of living and higher pay-rates in private industry.

CLIFFORD H. PRUEFER.

*Washington, D. C.*

**The Representative Function of Bureaucracy.** It is possible to distinguish in the federal administrative agencies, collectively known as "the bureaucracy," a separate branch of government distinct alike from the executive and from the legislature. It is equally possible to argue that the administrative agencies, because they are the organs through which the law becomes effective and because they are at least nominally under presidential control, are parts of the executive establishment; or that



through congressional control over appropriations they are extensions of the legislature. To the extent that the bureaucracy does in fact share all of these characteristics, it becomes the instrument through which the close fusion of executive and legislative functions required by the complex nature of modern government may be brought about under a constitution committed to the eighteenth-century doctrine of separation of powers.

The power to appoint administrative personnel is an executive power, and in so far as the administrative agencies are not subject to civil service rules, they are a source of executive patronage. More important still, the programs of these agencies originate in the first instance with the executive. Yet it is Congress alone which has the power to create, modify, or abolish operating agencies, as every attempt at executive reorganization has shown. Congress controls appropriations for carrying out administrative functions, and may direct those functions in any path it chooses simply by specifying in detail the way in which funds are to be used. Even in those comparatively rare instances in which administrative agencies are created by executive order, they are still dependent upon Congress for money to carry on their work, and may have assigned to them duties quite other than those originally intended. Thus the annual budget, which is also an annual program of work, of each administrative agency represents an agreement, or compromise, between the executive and the legislative branches.

The bureaucracy in this sense is the common meeting ground of the president and the Congress, and it is also the ground on which both executive and legislative functions may be brought into direct contact with the public in its organized and institutionalized capacity. The administrative process brings the administering agency into more or less direct contact with the individuals, groups, classes, or otherwise differentiated special interests on whom the laws operate. With occasional exceptions in the case of agencies carrying out regulatory or quasi-judicial functions, this contact is mutually helpful, and results both in giving the bureau officials an insight into the needs of a special interest group and in giving to that group an appreciation of the problems of government. When the experience and insight so gained are translated into recommendations for legislation or programs of operation in the annual budget, the administrative agency is actually functioning as representative of a special interest group, for which it has become congressional spokesman.

Before the advent of modern means of transportation and communication, major interest groups in the United States remained primarily sectional, and were adequately represented in Congress. The lower house, whose members were chosen by popular vote, stood for the numerical or popular interest, while the Senate, whose members were designated by the various state legislatures, spoke with a fair degree of authority for the

economic interests which dominated the respective states. It was only with the rapid spread of industrialism coincident with and subsequent to the Civil War that representation in Congress ceased to be in effect functional. The railroad and the telegraph served to break down sectional barriers, and economic and cultural interests thereafter cut too sharply across state lines to be adequately represented on a geographical basis. At the same time, the impact of technology forced Congress to deal with the highly complex problems of a rapidly changing economic and social structure. The law-making machinery was unequal to the task, the trained expert was introduced, and executive and legislative functions tended to merge. Thus the purposes of functional representation came to be accomplished through the creation of administrative agencies.

The first special interest to acquire an official spokesman at the seat of government in this way was agriculture. For thirty years the agricultural interest had been demanding a share of that governmental bounty by which industry had grown prosperous and powerful, but it could not make its weight felt at the polls. When the Civil War, however, abruptly cut off from the Union the rich farm lands of the South, a very real shortage of food and clothing became imminent, and necessity quickly overrode the constitutional scruples of the manufacturing interest. The Department of Agriculture was created on May 15, 1862, "to acquire and to diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that word";<sup>1</sup> and six weeks later the Morrill Act offered the states substantial grants of land, the proceeds from which were to be used "to teach such branches of learning as are related to agriculture and the mechanic arts."<sup>2</sup> In order to carry out its real purpose, which was to increase agricultural production as rapidly as possible, the new department enlisted the aid of science to solve the farmer's problems; and in a short time it was supplying, in addition to seeds and plants, advice and information on fertilizers, insect control, plant diseases, processing of farm products, and numerous other matters of importance to those responsible for the nation's food supply. The farmer promptly learned to carry his troubles to the Department of Agriculture, where they were turned into appeals to Congress for more money and new grants of power.

Thereafter other interests, as they were able to make good their claims before succeeding Congresses, secured departments or bureaus whose concern it was to look after their special welfare. Industrial and commercial interests, believing that they had been put at a disadvantage in comparison with agriculture, demanded an arm of government of their own, and in 1903 they secured establishment of the Department of Commerce, "to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping, and fishery industries, and the trans-

<sup>1</sup> 12 Stat. at Large 387.

<sup>2</sup> 12 Stat. at Large 503.

portation facilities of the United States."<sup>3</sup> In 1913, twenty years after the Homestead strike had shown that labor too was an interest, an independent Department of Labor was established to "foster, promote, and develop the welfare of the wage-earners of the United States, to improve their working conditions, and to advance their opportunities for profitable employment."<sup>4</sup> The creation of this department also was a result of long continued pressure, in this case from organized labor, and its Secretary, for the first twenty years of its existence, was always a trade union official.

In addition to, or subordinate to, the cabinet departments are numerous other federal agencies whose concern, in one form or another, is with the welfare of some special interest group. The Bureau of Animal Industry, for example, came into being in 1884, under pressure from American livestock producers, for the avowed purpose of recapturing for their product the European market which they had lost through unsanitary methods. The Office of Experiment Stations was set up after more than a dozen years of agitation by the state agricultural colleges, themselves a product of earlier demands. The United States Fish Commission, predecessor of the Bureau of Fisheries, originated in the belief of the American Fish Cultural Association, a trade organization, that the supply of food fish was diminishing; and the Biological Survey, recently merged with the Bureau of Fisheries to form the Fish and Wildlife Service, grew out of the activities of the American Ornithologists' Union. Organization of the Office of Road Inquiry in 1893 was precipitated by the organized bicycle riders of America, and its later development into the powerful Public Roads Administration of today has paralleled the growth of the automobile industry. Other administrative agencies which are similarly concerned with a special interest or industry include such bureaus as the United States Maritime Commission, the Food and Drug Administration, the Bureau of Home Economics, the Grazing Service, the Bureau of Mines, the Bituminous Coal Division, the Bureau of Foreign and Domestic Commerce, the Office of Education, and many more. If childhood, youth, and old age are interests, then the Children's Bureau, the National Youth Administration, and the Social Security Board also fall within this category; and surely the unemployed, with whom the Work Projects Administration is concerned, constitute a considerable and homogeneous interest.

The relation of each of these various agencies to the industry or interest that it particularly represents may differ considerably. The function may be largely promotional, like that of the Department of Commerce; or it may be primarily scientific investigation, like that of most of the bureaus grouped under the Department of Agriculture. The agency may be purely regulatory, like the Food and Drug Administration; it may be concerned extensively with construction work, like the Public Roads Administra-

<sup>3</sup> 32 Stat. at Large 825.

<sup>4</sup> 37 Stat. at Large 736.

tion; or it may serve the quasi-judicial purpose of mediation, as does the Interstate Commerce Commission. Whatever form or combination of forms the function takes, the essential fact remains that there exist within the administrative branch of the federal government numerous agencies whose concern is focused upon particular industries or interest groups, and whose function extends to recommending to Congress legislation with respect to these interests.

The history of these administrative agencies follows two general patterns, both of which emphasize the rôle of the bureaucracy as intermediary between the executive and legislative branches of the government on the one hand, and on the other the special interests of the nation—call them estates of the realm, corporations, classes, economic groups, or any other name you will. One pattern is followed in times of emergency—usually wartime—and consists in the creation of a governmental establishment for the explicit purpose of stimulating some lagging industry whose services are of crucial importance to national defense or public welfare. Such were the origins of the Department of Agriculture, of the National Advisory Committee for Aeronautics, and of the Public Works Administration—to name the most clear-cut examples. The other pattern is the well-marked one by which some powerful and well organized interest, economic or otherwise, wants a particular function to be performed, and applies pressure to Congress until a special agency for performing it is set up. Many examples of this type have already been given, including the Department of Commerce and the Department of Labor. In the first case, government goes to the interest group; in the second, the interest group goes to government. In both cases, the resulting administrative agency becomes the official instrument through which the wishes of the interest group are made known to the coördinate legislative and executive branches of government, just as it is also the instrument through which the will of Congress, with the approval of the president, operates on the interest group. This is not meant to imply, of course, that the administrative agencies are the only instruments for performing this intermediary function, nor that they have no other reasons for existence. They are, however, the only legally constituted organs our system affords through which the will of special interests may be made known to Congress and the executive. Lobbies and similar direct means, although they are frequently the means of securing a new administrative agency in the first instance, are extra-legal, irresponsible, and often vicious.

When Congress yields to external or internal pressure and establishes a new agency, it tends to shift to the agency so created responsibility for evaluating the needs of the particular interests concerned. Aside from its original purpose of supplying expert advice to deal with specialized functions, the method relieves Congress of the hazard of negotiating with

powerful economic groups which may become antagonistic if the full extent of their demands is not met, and at the same time it leaves the individual congressman free to criticize the "bureaucracy" for wastefulness, extravagance, and irresponsibility whenever the exigencies of politics seem to require it. Congress may be swayed now by one interest, now by another; but the administrative agencies, so long as their functions remain unchanged, are always concerned exclusively with the same interests. They may, therefore, come into conflict with Congress on any given occasion, and since they are completely dependent upon appropriations, they are almost literally driven to seek help in the form of pressure from those interests that they particularly serve whenever hostility to their programs develops in the national legislature. Thus congressional opposition to a farm program originating in the Department of Agriculture may be overcome by the demands of the farmers themselves, made aware of the situation in a variety of direct and indirect ways; or the Weather Bureau may secure authorizations previously denied by enlisting the support of such important consumers of weather services as the air transport industry and the navy.

The resulting tendency of administrative officers to build up political machines of their own in the process of enlisting public, which is to say special-interest, support of their agencies has often been pointed out as one of the real dangers of bureaucracy. Yet the public administrator, if he wishes to keep his bureau alive, has no other choice. His financial support and statutory permission to undertake new activities both come from Congress, and Congress pays little heed to requests for funds or legislation not backed by organized pressure groups. This very situation has led many administrative agencies, especially those with rule-making powers, to consult in advance with the interests that will be affected by any action the agency may take, and such organs as the Business Advisory Council of the Department of Commerce exist to serve this very purpose. The extent to which administrative agencies must function as representatives of special interests cannot be more clearly indicated than by pointing out that wherever these agencies have had for their purpose the serving of a public interest, like the Tariff Commission and the Federal Trade Commission, they have been helpless. Congress has failed to support their efforts, and the courts have hamstrung any accomplishments that they have achieved. The unorganized "public" has no special interest, no lobby, and for all practical purposes, no representation.

The American bureaucracy has come into being over a century and a half in response to very definite and specific needs, more often than not at the instigation of those very interests which now complain of the overgrown government in Washington. The various administrative agencies that make up the bureaucracy serve a wide range of purposes, but one of

the most important is that of supplying in some measure the functional representation which has long since ceased to exist in the legislative branch. Perhaps if this representative function were consciously and intelligently developed by administrators, and encouraged by Congress, it might prove a vehicle both for the closer integration of government and economic life, and for the elimination of some of the more glaring abuses of pressure politics.

CHARLES M. WILTSE.

*Washington, D. C.*

**Organization of the Executive Branch of the National Government of the United States: Changes between November 16, 1940 and March 31, 1941.**<sup>1</sup> As in previous lists, mention is here confined generally to units specifically authorized by law or established by the President by executive order or Reorganization Plans under general authority vested in him. Changes in units created by heads of departments or independent establishments are excluded unless of major importance.

*Advisory Committee on Fire Fighting and Prevention.* Appointed by the Director of State and Local Coöperation of the National Defense Advisory Commission on December 5, 1940, to study the problem of fire prevention in the defense program, to provide for development of methods and training, and to disseminate information.

*Bureau of Foreign and Domestic Commerce.* Reorganized by order of the Secretary of Commerce of January 23, 1941, into the five following major divisions: research and statistics; industrial economy; regional economy; international economics, and commercial and economic information.

*Committee to Coördinate Relief Activities.* Appointed by the President by letter to members on March 13, 1941, to study and recommend methods of dealing with the raising of funds in the United States by private agencies for use both in the United States and foreign countries. The committee consists of three members.

*Division of Defense Housing Coördination.* Established in the Office of Emergency Management in the Executive Office of the President by Executive Order 8632 of January 11, 1941. It is headed by a Coördinator of Defense Housing appointed by the President.

*Efficiency Rating Boards of Review.* One or more directed to be established in each department and independent establishment by Public No. 812, 76th Congress, approved November 26, 1940. Each board shall be composed of three members, the chairman to be designated by the Civil,

<sup>1</sup> Articles of this character appearing in the REVIEW prior to 1940 are listed on page 1044 of the issue for December, 1939. Later articles have appeared in the issues for June and October, 1940, and February, 1941.

Service Commission, one member by the head of the department concerned, and one by the employees of the department concerned.

*Health and Medical Committee.* The Health and Medical Committee established by the Council of National Defense on September 19, 1940, was transferred to the Federal Security Agency by order of the Council of November 28, 1940. All rules or activities required to be submitted to the Council of National Defense or the President, "shall prior to submission thereto" be approved by the Federal Security Administrator.

*National Defense Mediation Board.* Established by Executive Order 8716 of March 21, 1941, in the Office of Emergency Management to make efforts to settle labor controversies affecting national defense, to afford means for voluntary arbitration, to assist in establishing methods for resolving future controversies, and to investigate issues and formulate recommendations. The Board has fact-finding and advisory powers only, and these do not extend to disputes coming within the purview of the Railway Labor Act. It acts only after certification by the Secretary of Labor that a controversy exists. It consists of eleven members appointed by the President; three are disinterested persons representing the public, four are representatives of employees, and four are representatives of labor.

*Office for Coördinator of National Defense Purchasing.* Order of June 27, 1940, of Council of National Defense establishing this office revoked on January 7, 1941. All records and unfinished business transferred to the Executive Office of the President.

*Office for Emergency Management.* This office was created in the Executive Office of the President by administrative order of May 5, 1940. Its functions were increased by administrative order of January 7, 1941, so that they are now as follows: To advise and assist the President in the discharge of extraordinary responsibility imposed on him; to serve as a division of the Executive Office of the President, through which the President may coördinate the activities of the several agencies; to serve as a channel of communication between the agencies and the President; to maintain liaison with the several agencies; to advise the President, on termination of any emergency, with respect to measures needful to restore normal administrative relations; to coördinate the work and activities of the Council of National Defense, the Advisory Commission to the Council of National Defense, the Defense Communication Board, and the Office of Production Management.

*Office of Coördinator of Health, Medical, Welfare, Nutrition, Recreation, and Other Related Fields of Activity Affecting National Defense.* Created by Council of National Defense November 28, 1940, the Federal Security Administrator being designated as coördinator. The coördinator, in co-operation with the Advisory Commission of the Council of National

Defense, is to formulate and execute plans, policies, and programs in the field indicated, coördinate existing federal agencies, and establish liaison with such other agencies, public or private, as he may deem necessary or desirable. He is also authorized to appoint committees and sub-committees.

*Office of Production Management.* Created in the Office for Emergency Management of the Executive Office of the President, by the President by Executive Order 8629 of January 7, 1941, for the following purposes: to formulate and execute measures to increase production and insure effective coördination of the several agencies of the government; to advise with respect to plans; to make plans for an adequate supply of essential raw material; to formulate plans for the mobilization of defense facilities; to stimulate creation of additional facilities, to determine manner in which priorities shall be accorded; to serve as the liaison and channel of communication between the Advisory Council of National Defense and the Departments of War and Navy with respect to purchasing and production covered by Public Acts Nos. 667, 781, 800, and 801, and Public Resolution 95, 76th Congress; and to perform such other functions as the President may assign to it.

The Office of Production Management consists of a Director General, an Associate Director General, each to be appointed by the President, the Secretary of War, and the Secretary of the Navy.

Provision is made for the following divisions: (a) Production, (b) Purchases, (c) Priorities. There may be such other divisions as the President may from time to time determine. Each division is in charge of a director appointed by the Office of Production Management with the approval of the President.

Within the Office of Production Management is a Priorities Board composed of a chairman and three other members appointed by the President, and of the Director General and Associate Director General of the Office of Production Management. The Priorities Board shall serve as an advisory body. The Priorities Board established by Executive Order 8572 of October 21, 1941, is abolished.

*Production Planning Board.* Created as a unit of the Office of Production Management on February 20, 1941, to advise regarding industrial planning, both during the emergency and thereafter. It consists of nine members representing the Army, the Navy, industry, labor, and scientific research.

*Under Secretary of War.* Office created by Public No. 891, 76th Congress, approved December 16, 1940. The office will terminate on January 20, 1945.

L. F. SCHMECKEBIER.

*The Brookings Institution.*



## FOREIGN GOVERNMENT AND POLITICS

**British By-Elections Between the Wars.** The electoral system of Britain provides students of representative government and observers of voting behavior with a large and valuable field of investigation. The Mother of Parliaments has been elected on a democratic basis since 1918, and the constituency pattern which was rearranged after the first World War has continued down to the present time. The party picture too, although constantly changing, has not been altered fundamentally during the period. We have therefore an interesting and satisfactory span of time between the two world wars in which to examine the various aspects of British electoral institutions and behavior.

In this study I propose to describe and evaluate the by-election as one of the interesting aspects of the British electoral system. Special elections to fill vacancies occur in several other countries, but nowhere is the special or by-election the object of so much attention and discussion as in Great Britain. Not only do the newspapers carry complete stories about by-election campaigns, but the results are also commented upon in Parliament, discussed in the party clubs, and sometimes made the basis for important attacks on the Government. The *Parliamentary Debates* frequently contain remarks by members of the Government or the Opposition which attempt to give great importance to particular by-elections, or to the trend of recent by-elections.<sup>1</sup> This widespread discussion of by-elections has, over a period of time, caused them to become a rather important part of the whole pattern of British politics, and has made them bulk rather large in British political thinking. Herman Finer, for instance, refers to them as "invaluable periodical referenda on the action of the government."<sup>2</sup> Regardless of whether or not they have real electoral significance, therefore, by-elections should not be overlooked as a part of the British party process.

When it comes to studying the returns of by-elections over a long period, however, in order to ascertain their effect upon party majorities and their significance as barometers of opinion, we are dealing more with facts than with opinions. As an electoral device for consulting voters in the interim between general elections, the by-election is measurable and calculable in many of its aspects. We can thus determine whether popularly-held opinions about the by-election are borne out by the figures. Furthermore, by-elections occur so frequently and regularly that they furnish us with valuable data on voting behavior. General elections in Britain being rela-

<sup>1</sup> See, for instance, 132 *Parl. Debs.*, 4th series, cols. 1015 ff.; and *ibid.*, 141, cols. 160 ff., 181 ff.

<sup>2</sup> Fabian Tract, No. 211, p. 12. See also John H. Humphreys, P. R. pamphlet No. 83.

TABLE I. BRITISH BY-ELECTIONS—FEB., 1919, TO SEPT., 1939

Year	Number of By-Elections	Reasons for By-Election				No. of Uncontested Elections			Popular Participation in Contested Elections		Party Result					
		Death	Resignation	To Peerage	Appointed to Other Office	In Previous General Election	In By-Election	In Both	By-Election Vote Higher than in Previous General Election	By-Election Vote Lower than in Previous General Election	Comparison with Contested General Election		Comparison with Constituency Pattern		Size of Vote of Winning Party	
											Same	Reversed	Same	Reversed	Higher than in Previous General Election	Lower than in Previous General Election
1919	19	8	5	5	1	3	1	0	8	7	15	4	15	4	11	
1920	24	8	3	2	11	6	2	0	14	2	16	7	16	9	12	
1921	25	7	9	3	6	6	4	3	11	1	13	7	18	8	4	
1922	23	10	6	2	1	2	2	5	13	6	9	8	13	5	6	
1923	15	9 <sup>a</sup>	3	2	1	0	0	1	9	3	7	3	8	4	7	
1924	10	6	2	1	1	1	0	0	5	8	6	3	8	4	4	
1925	9	4 <sup>a</sup>	0	0	5	1	0	0	2	6	10	4	8	4	7	
1926	14	2	6	1	3	1	1	0	4	8	6	2	5	6	6	
1927	18	9	3	5	0	2	0	0	6	2	4	4	10	2	6	
1928	18	2	1	3	0	0	0	0	8	8	2	5	8	0	1	
1929	20 <sup>a</sup>	14	2	2	2	0	6	0	2	3	13	6	14	4	12	
1930	10	6	2	2	0	0	0	0	3	17	14	3	16	5	15	
1931	20	12	6	3	0	0	1	1	1	17	7	2	18	1	11	
1932	15	6	3	4	2	0	2	1	3	9	13	2	14	2	10	
1933	16	10	3	2	3	2	2	0	3	11	13	2	14	4	14	
1934	16	9	2	1	3	1	3	0	1	6	11	5	12	0	7	
1935	14	5	1	4	4	1	3	3	1	8	8	3	10	0	10	
1936	13	5	3	4	1	1	0	0	4	24	22	4	22	2	22	
1937	26	11	6	7	2	2	0	0	9	10	17	3	17	4	12	
1938	20	14	2	3	1	2	0	1	7	10	15	2	15	5	12	
1939 <sup>a</sup>	17	14	0	1	2	0	1	0	1	16	15	2	15	2	14	
Totals	352	173	67	56	56	31	26	15	106	174	266	86	282	70	210	

<sup>1</sup> In these columns, all elections which were unopposed in either the by-election or the general election were not counted.<sup>2</sup> Included in this figure is one case of a member unseated by an election petition.<sup>3</sup> Two seats vacant at dissolution are not included.<sup>4</sup> An electoral truce was signed in September.

tively infrequent, it is interesting to observe the voting habits of the electors in those occasional consultations we call by-elections. Occasional non-voting may be quite as significant as habitual non-voting. In any case, an electorate should not be judged merely by what it does once in five years. Its occasional responses may also be revealing.

I have collected and tabulated the available figures for all of the British by-elections in the twenty-one year period between the general election of 1918 and the declaration of war in September, 1939.<sup>3</sup> This extensive body of figures, when classified and subjected to analysis, reveals the essential facts about the British by-election as an electoral and political device.<sup>4</sup>

## II

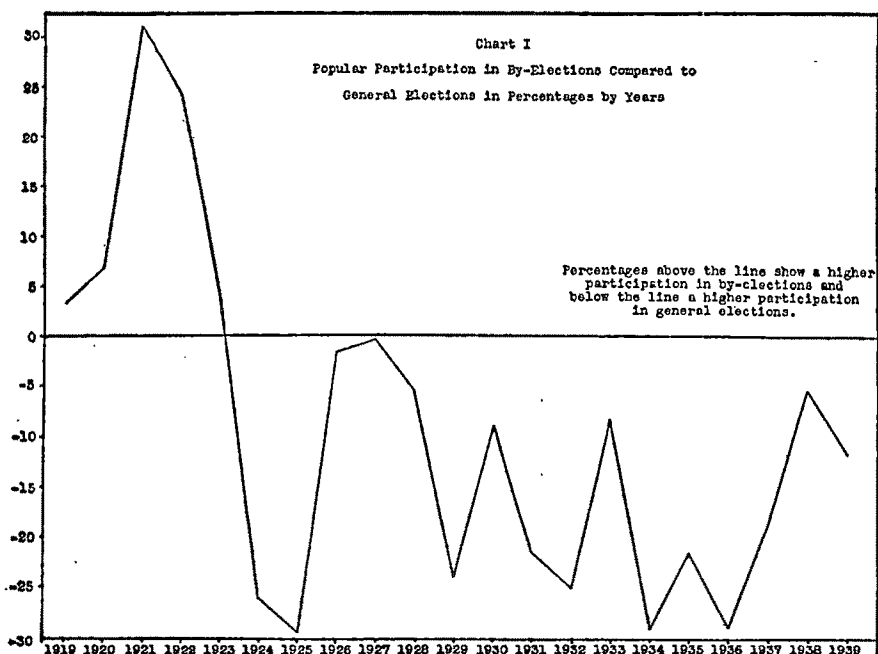
It is first of all interesting to note from Table I that in the twenty-one year period under review there were 352 by-elections. In other words, between 16 and 17 by-elections occurred, on the average, each year. In the four-year period from 1919 to 1922, more by-elections occurred than in any other similar period. But, as the table will show, every year is an active year for by-elections, as many as 26 of them occurring in the year 1937. The reasons for the by-elections are given in the table as death, resignation, elevation to the peerage, and appointment to another office. Nearly half of the vacancies are due to death, the other half being due to the other reasons just given. No fact of importance is revealed by the geographical distribution of by-elections, inasmuch as the vacancies in general occur most frequently in the English provincial boroughs and counties where most of the parliamentary seats are located. Many constituencies, of course, have not had a by-election, while a few of them, for instance Cambridge University and the Scottish Universities, have had several.

For purposes of analysis, it is necessary to separate the constituencies in which there have been contests between the parties, both in the by-election and in the previous general election, from those in which no party contests have occurred. Seventy-two such uncontested elections have taken place during the period, leaving 280 by-elections for which comparisons of voting behavior may be made.

<sup>3</sup> The following electoral truce on parliamentary by-elections was signed in September, 1939, by the three chief party whips: "We jointly agree, as representing the Conservative, Labour, and Liberal parties, as follows: (a) Not to nominate candidates for parliamentary vacancies that now exist, or may occur, against the candidate nominated by the party holding the seat at the time of the vacancy occurring. (b) The agreement shall hold good during the War or until determined on notice given by any one of the three parties signatories hereto." *The Labour Party, Thirty-Ninth Annual Report*, p. 19.

<sup>4</sup> A small sample for any given year may lead to sound conclusions, but it is always better, although much more laborious, to present complete figures.

Taking these 280 elections, we find that in 174, or 62 per cent of them, the voting participation was lower in the by-election than in the previous general election. Contrariwise, it is rather significant, I think, to find that in 106, or 38 per cent, of the by-elections, more votes were cast than in the previous general election. Through the year 1924, popular participation in by-elections was more frequently higher than in the regular parliamentary elections which preceded them. In more recent years, and quite without reference to whether the year was near to or far from a general



election, participation has been comparatively lower than in the earlier part of the period. The extension of the parliamentary franchise to women on the same basis as men in 1928 may have had some effect, for one can see by reference to Chart I that a drop in participation occurred the very next year, and no substantial revival of participation has occurred since that time. Furthermore, participation in the general election of 1923 was almost exactly the same as in the general election of 1935, while participation in the by-elections of 1935, when compared to those of 1923, is much lower.

The intensity of the party struggle and the efficiency of the dominant party organization, at any given time, appear to be of more importance in accounting for variations in participation than the factor of sex. The constituencies in which a larger vote was cast in the by-elections are more

often than not areas of doubtful party loyalty where the party balance is quite even. The Dartford division of Kent, the Pontefract Division of the West Riding of Yorkshire, Ipswich, and Walsall are good instances. In other cases, as in the Stafford Division of Staffordshire, the higher vote in the by-election is probably due more to the efficiency of the dominant party organization than to any other factor.

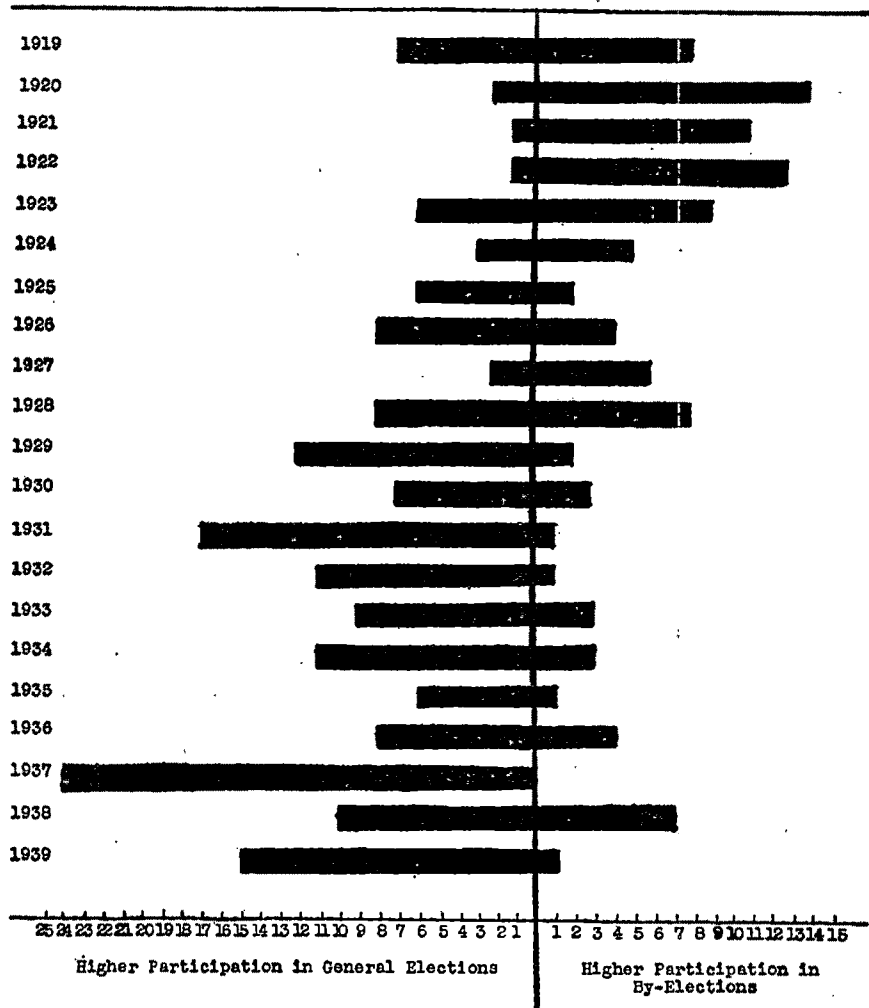
TABLE II. TOTAL VOTE IN BY-ELECTIONS COMPARED TO  
TOTAL VOTE IN PREVIOUS GENERAL ELECTIONS

<i>Year</i>	<i>Number of Contested Elections</i>	<i>Total Vote in By-Elections</i>	<i>Total Vote in Previous General Elections</i>	<i>Percentage Participation in By-Elections Compared to General Elections</i>
1919	15	274,539	265,791	103.29
1920	16	371,660	348,485	106.65
1921	12	273,552	208,500	131.20
1922	14	331,762	267,237	124.14
1923	15	345,265	334,041	103.36
1924	8	232,988	314,784	74.01
1925	8	261,414	369,879	70.67
1926	12	316,978	322,379	98.32
1927	8	207,527	208,169	99.69
1928	16	412,089	436,150	94.48
1929	14	411,376	538,900	76.33
1930	10	309,352	339,709	91.06
1931	18	623,093	794,155	78.47
1932	12	343,905	457,857	75.11
1933	12	394,616	430,403	91.68
1934	14	466,739	657,449	70.99
1935	7	215,329	274,306	78.49
1936	12	432,643	609,920	70.93
1937	24	692,936	852,405	81.29
1938	17	698,164	713,291	97.88
1939	16	437,523	495,892	88.22
Totals	280	8,053,450	9,239,675	87.16

In any case, as may be seen from Chart I and from Table II, by-elections in recent years have not attracted the high popular participation which occurred in the earlier part of the period. The bar graph (Chart II), which is based on the number of elections rather than on percentages as in Chart I, shows in a different way the same decrease in participation. The unusual apathy which characterized the by-elections of 1937 appears to indicate the debilitating effect of a one-sided party situation.

Taking the voting figures for the period as a whole in the 280 contested

Chart II  
Number of By-Elections with Higher and Lower Participation  
than in General Elections



by-elections, we find by reference to Table II that a total of 8,050,691 votes have been cast in the by-elections as compared to 9,262,434 votes cast in these constituencies in the previous general elections. In other words, there is approximately a 13 per cent lower average participation in by-elections than in general elections. Comparable figures for the United States are not available. But so far as my observation of special elections in the United States has gone, it appears that two-thirds to a half of the voters in America do not turn out for special elections as compared to the 13 per cent just presented for British by-elections.

Referring back to the last two columns in Table I, it may be seen that in 210, or exactly 75 per cent, of the contested by-elections the vote secured by the winning party candidate was lower than in the previous general election. Since, as we shall see, the same party which won the previous general election ordinarily wins the by-election also, it is natural to find that the winning party's vote is lower. A new candidate could not ordinarily be expected to draw as large a party vote in the circumstances as his predecessor. We see, therefore, not only that the total vote in by-elections is smaller than in previous general elections, but that the vote of the individual winning candidate is also lower.

### III

Perhaps of more general interest than the above figures of popular participation in by-elections are the figures showing the party results of these periodic contests. If it is found that by-elections regularly follow the pattern of behavior of the constituencies in which they are held, they cannot be considered useful political barometers. Taking a small sample of by-elections in the few months following Munich, a recent writer has expressed the opinion that "the basic determinant of their outcome was obviously where they were held."<sup>5</sup> Let us see whether by-elections are good weather-vanes regardless of where they occur.

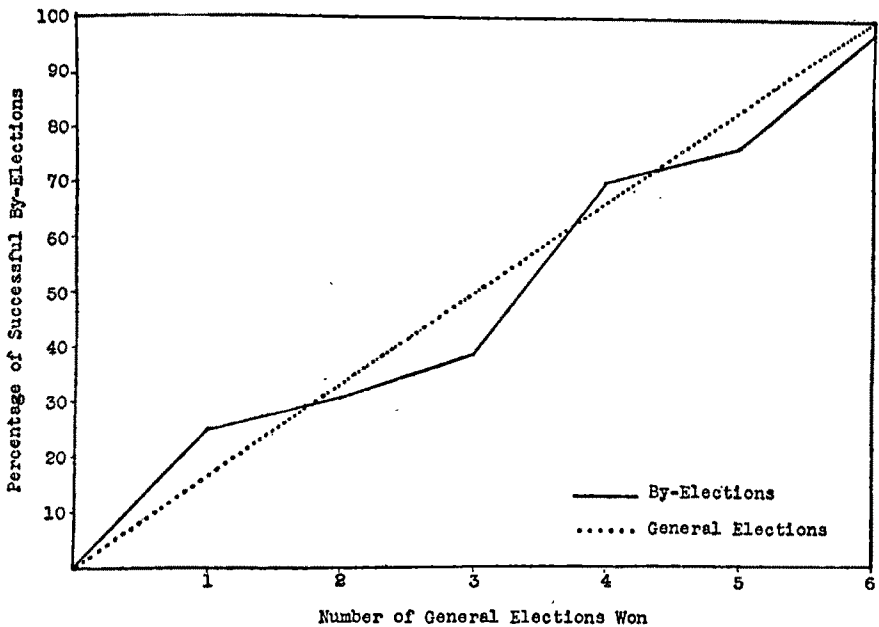
There are 595 constituencies in which members of Parliament are elected, a few constituencies electing more than one member. As we have seen, in more than 300 of these areas by-elections have occurred during the period under review. In order properly to compare the party results in by-elections with the party pattern in these constituencies, it is necessary to study carefully the party behavior of all of these constituencies as expressed in the election returns of the whole post-war period. British parliamentary constituencies, in fact whole areas of Britain, are quite as steady in their party allegiances as are certain areas in the United States. In connection with other studies I am undertaking, I have been able to classify all British parliamentary constituencies according to their party behavior. With this material at hand, I am therefore able to make use of it in explaining the value of by-elections as political barometers. Limited samplings might have produced the same results, but a conclusion is stronger when it is based on a large number of by-elections over a long period of time. And without knowing the party behavior of all of these constituencies, one would not be able to come to very sound general conclusions.

By reference again to Table I, we learn that in 266, or 75.6 per cent, of all the by-elections included in this study of a twenty-one year period, no changes occurred in the party representation of the constituencies in

<sup>5</sup> J. C. Sparks, in this *REVIEW*, Vol. 34, p. 103.

question. Three out of every four by-elections, in other words, merely register over again the results of the previous contested general election. Somewhat more striking are the following figures. Comparing the by-election results with the long-run constituency pattern of party behavior, we find that in 282, or 80.1 per cent, of the by-elections, no change in party status is recorded. To state the same important fact in another way—in only 70 out of 352 by-elections in the period between the wars have the results varied from the usual party response of the constituencies in question. Only one by-election out of five is an upset. In all the other

Chart III  
Relation Between Success in General and By-Elections



instances, the by-election merely registers a foregone conclusion. The constituency organization of the dominant party might just as well have been empowered to fill the vacancy, at least so far as party representation is concerned.

The rather uniform way in which constituencies vote both in general and by-elections is shown in Chart III. Here it may be seen that the degree of success of the dominant party in by-elections corresponds closely to the degree of success in general elections. That is to say, in a constituency in which a party has won every general election since the first World War, the chances are very small that this same party will lose a



by-election. As the general party strength declines, the chance of success for that party in by-elections also declines. The correlation between the two is not exact, for the two lines do not exactly coincide. But the tendency is marked. This seems to prove that only those by-elections which occur in constituencies where party loyalties are divided are of any value as mirrors reflecting public opinion. The few reversals which do occasionally occur in by-elections may be encouraging to party organizers. But in four out of five cases, the party significance of by-elections is almost nil. As an electoral device for registering in public opinion the reactions to the policies of the Government, therefore, the by-election is a much over-rated institution.

From the point of view of party organization, a case may be made out for the by-election. Such occasions give opportunity to the constituency organization to oil up and vitalize its machinery for the specific task in hand. The Central Office is in a position to give more than ordinary assistance, and the adjoining constituencies give considerable help. The by-election undoubtedly does stir up a great deal of political interest in the constituency. The area occupies the limelight for a short period, and it receives more party attention than at any other time. The by-election, too, provides the press with a whip with which to arouse political interest, even though it does also furnish the press with a peg on which to hang a considerable amount of partisan prejudice. Nevertheless, the public discussion consequent on by-elections helps to keep the electorate informed about public issues, and thus the by-election can be said to serve a good educational purpose.

#### IV

Recapitulating the results of this survey, we can say with some definiteness that the by-election is an interesting political device for stimulating interest in the policies of the government of the day. It also makes a contribution toward increasing the efficiency of the party organizations, and in furnishing a gauge of party sentiment in the particular constituency. As a political barometer, however, the by-election is unreliable and of little significance. If one were to select the sixty-odd doubtful constituencies in Britain and hold periodic by-elections in them, one would have the best possible test of prevailing public sentiment. But by-elections rarely occur in these areas. More frequently than not, they are held in relatively safe constituencies. Older and more experienced M.P.'s tend to gravitate toward safe seats. Vacancies are more likely to occur among this class of members of the House of Commons than among any other. Hence by-elections in these areas merely reflect changes in personnel and not changes in party or changes in the popularity of the government.

If the British democracy finds it necessary to have frequent tests of

public sentiment—and any democracy may well make provision for such tests—it should adopt some other device than the present by-election. If it understands that the present system of by-elections is based on purely fortuitous circumstances and is merely a convenient way for filling vacancies in the Commons when they occur, that is one thing. But the British public should not think, even if it now does, that the by-election is a political weather-vane.

The expense of holding by-elections could be eliminated without in any way disturbing the relative strength of the parties. Such an elimination of an old British institution might cause some diminution in public interest. But in any case the value of the by-election is much over-rated, and one is hardly justified in using it as a reason for objecting, for instance, to the adoption of proportional representation as a system for electing members to the House of Commons. If periodic tests of public opinion are desired, they can be provided for in a more satisfactory manner than by means of a system of by-elections which uses only those areas where fortuitous circumstances have caused a vacancy.

It is true that a relatively high degree of popular interest is shown in by-elections—much higher than in the United States. It is also true that in 20 per cent of the by-elections, reversals in party strength occur. But very little reliance should be placed on changes which occur in a few local constituencies. Such areas may be poor reflectors of national sentiment. The words of Prime Minister Arthur James Balfour back in 1904 ring true today: "I do not for one instant," he said, "admit that the by-elections are a test, or ought to be regarded as a test, of public feeling. They are, of course, a test of the feelings of a particular constituency at the time the by-election takes place. They are not, and they cannot be made, the index and the test of what the feeling of the people of the country is as a whole. Any doctrine that is inconsistent with that is, in my judgment, not only wholly unconstitutional in theory, but wholly unworkable in practice."<sup>6</sup>

In the post-war reconstruction of British government, attention must be given to the electoral system because it is now ill-adapted to the present party situation. Perhaps at that time the British experience with by-elections, as above reviewed, will be utilized to develop a better answer to the important democratic problem of keeping the government attuned to changes in opinion.

JAMES K. POLLOCK.

*University of Michigan.*

**The Military and the Government in Japan.** After fifty years of experimentation in constitutional government, Japan finds herself today on

<sup>6</sup> 132 Parl. Deb., 4th series, col. 1016.

the threshold of a new era of revolutionary changes. For the greater part of the past half-century, the Japanese political system functioned well. But in recent years many Western features have been found rather awkward and ill-fitting, if not actually obstructive. For some time now, the nation has been discarding many of the foreign trappings which once served so well, but are no longer worth preserving. This casting-off process has been gaining momentum steadily since 1933 and was greatly accelerated by the voluntary liquidation of political parties in July and August, 1940. Thus, a political renovation of a scope heretofore unknown is now in full swing with a new national structure rapidly taking form to meet the dynamic changes in all phases of the Empire's national life.

Undoubtedly, the most urgent problem of Japanese politics today is the synchronization of political and military functions with a view to achieving an effective total national defense system. The coördination and unification of the activities of the government and the military necessarily form the keystone of the new national structure. It is, therefore, not difficult to see why the Konoyé cabinet is now bending a large part of its efforts toward the satisfactory solution of this vexing problem.

In the West, there has developed a popular misconception that the military in Japan is entirely independent and unaccountable for its acts, and that it can floutingly disregard the government at will. Furthermore, it is assumed by Westerners that this independence is guaranteed by the national constitution. It cannot be over-emphasized that the most searching examination of the constitution will fail to reveal any provision which can possibly be interpreted as a legal basis for such an assumption.<sup>1</sup>

What obtains in practice is the separation of strictly military functions which come under the category of the "supreme command" from the civil functions of the state. Several high ranking generals and admirals enjoy direct access to the Emperor as participants in the supreme command.<sup>2</sup> This system is based on the theory that the power of supreme command belongs to the Emperor and that he exercises this personal prerogative as the military head, and not as the political head, of the state. It must not be assumed, however, that there has always been a separation of the supreme command from government and military administration. For a decade after the establishment of the Meiji government in 1868, there

<sup>1</sup> Only two articles in the constitution pertain to the military. Article XI merely states: "The Emperor has the supreme command of the Army and the Navy." Article XII reads: "The Emperor determines the organization and peace standing of the Army and the Navy." Neither article guarantees independence of the military.

<sup>2</sup> Those who enjoy direct access to the Emperor are: chiefs of staff of the Army and the Navy, supreme war councillors, field marshals and fleet admirals, inspector general of military education, inspector general of military aviation, war and navy ministers, commanders of army divisions and army corps, and commandants of naval stations and fleet commanders.

was no separation in the exercise of civil and military functions.<sup>3</sup> At the time of the Saga Rebellion in 1874, Toshimichi Ōkubo, who was state councillor and home affairs minister, was invested by the government with full military powers for the purpose of restoring peace and order. Even during the Satsuma Rebellion three years later, powers of military command were actually in the hands of the same civilian official, Ōkubo. The creation of the General Staff Office on December 5, 1878, by an imperial ordinance, marks the beginning of the separation of military command from military administration as well as from general state administration. With the reorganization of the General Staff Office on March 18, 1886, a complete separation was achieved.

Needless to say, the relationship between the military and the government in public law is by no means clear.<sup>4</sup> However, as a result of practice over a period of years, the military maintains a position of independence from the government in strictly military functions of non-administrative nature.<sup>5</sup> Thus, the cabinet does not assist in the exercise of the Emperor's personal prerogative of the supreme command, as can be observed from Article 7 of the Law for the Organization of the Cabinet (Imperial Ordinance No. 135) of December 24, 1889, and revised in 1907 (Imperial Ordinance No. 7), which reads: "With the exception of matters pertaining to military secrets and military command which, having been reported directly to the Emperor [by the Chief of Staff], may be submitted by His Majesty to the Cabinet for consideration, the Ministers of State for War and the Navy shall report to the Minister President."

No delimitation of the scope of the supreme command has yet been worked out. However, military and naval operations and strategy, internal organization, education, and discipline of the armed forces fall properly within the scope of the supreme command and are governed by military ordinances which possess binding power only on the armed forces, and therefore do not require cabinet deliberation and approval.<sup>6</sup> In these

<sup>3</sup> I. Watanabé, "Tōsuiken Dokuritsu no Shiteki Kōsatsu," *Kaizō*, Sept., 1940, p. 22.

<sup>4</sup> See T. Minobé, "Waga Kokuhōjō ni okeru Gumbatsu to Seifu to no Kankei," *Kaizō*, June, 1930, pp. 19-26. Also S. Sasaki, *ibid.*, p. 109.

<sup>5</sup> The following are some of the important organs of the supreme command which are independent of the government because of their purely military functions: General Staff Office, Naval Board, Office of the Grand Chamberlain, Board of Field Marshals and Fleet Admirals, Supreme War Council, Wartime Imperial Headquarters, Army Corps Headquarters, and Fleet Headquarters.

<sup>6</sup> Education in the navy is placed under the jurisdiction of the navy minister, who supervises the Naval War College, whereas, in the army, the Army War College is under the inspector general of military education. Thus there is a difference between the army and the navy with regard to educational administration. Penal administration in the armed services is considered a general state function, but the court martial is entrusted with carrying it out.

matters, the exclusive competence and complete independence of the military have never been seriously questioned.

Practically all of the difficulties between the government and the military have arisen in the periphery of the supreme command, in those matters which, because of their bearing upon general national policies as well as the rights and duties of the people, require cabinet deliberation and approval. All policies of national defense thus come under the jurisdiction of the cabinet. Such matters as external organization of the armed forces, conscription of men and materials, mobilization of troops, proclamation of martial law, appointment and dismissal of army and navy personnel, and military operations which may affect foreign relations fall within the competence of the cabinet.<sup>7</sup>

Disagreements in the field of policy-making occur repeatedly within the cabinet because the ministers of war and navy have a dual status. They are at once the representatives of the armed forces in the cabinet and *ex officio* participants in the supreme command. In the former capacity, they are civilian functionaries, while in the latter, they are military officials.

What factors are responsible for the favored position of the military in national affairs? The most apparent source of military strength and prestige, too often over-emphasized in the West, is the legal one. There are several other factors which are far less conspicuous but much more deep-rooted and potent. Tradition, nurtured over a period of some seven centuries of feudalism, has contributed, more greatly than generally assumed, to the moral position of the present-day military. Bushidō, with its time-honored ideal of loyalty, justice, benevolence, and self-effacement, constitutes a vital force in the military tradition, and since it is shared by the people as a common heritage it serves as a strong bond between the armed services and the general public. Since the army and navy have been, in many ways, the most powerful equalitarian force and the champion of the underprivileged, they have always had a strong hold on the people.

Add to this advantageous moral position another factor, the inexorable forces of history which started with the opening of the country in 1854. Japan found herself, then, in the midst of an ever-rising tide of world imperialism and nationalism, and dangerously close to becoming completely engulfed by it. Her precarious existence for the next half-century was made possible partly by the sufferance of Western powers impelled by imperialistic rivalries rather than by international comity, and partly by her grim determination to preserve herself by military strength. Her

<sup>7</sup> In actual practice, a decision is first reached in a conference of the supreme-command organs, including the Supreme War Council and the war or navy minister, who submits the proposal of the military to the cabinet for deliberation and decision. If approved by the cabinet, it is referred to the Privy Council by the Emperor for advice before it can become a law.

national security was advanced and her position in the family of nations greatly enhanced each time by a successful participation in a foreign war: the Sino-Japanese War of 1894-95, the Boxer Rebellion of 1900, the Russo-Japanese War of 1904-05, and the World War of 1914-18. Japan's recognition as a world power came only as a result of successful wars; her peaceful cultural achievements received scanty attention, if any, from the Western powers. This attitude on the part of the West has had a salutary effect on the prestige of the military. It also made the Japanese people realize more than ever the importance of military might, and thereby gave new impetus, if not a stamp of approval, to their centuries-old military tradition.

It would be erroneous, however, to assume that the military has always enjoyed great power and prestige. Its prestige has always fluctuated in response to international as well as domestic conditions. There was a time when, in the early 1870's, the brilliant minds of the army and the navy were perfectly content to devote their energies to civilian activities such as law codification, local administration, education, and police administration, showing little interest in politics because the military then had little influence or prestige.<sup>8</sup> More recently, in the 1920's, when the trend toward world-wide disarmament was strongly felt in Japan, the military was completely eclipsed by the political parties, which were definitely in their ascendancy.<sup>9</sup>

That the strength and position of any group in the body politic can be understood only in the light of power relationships existing between it and the other component parts needs no emphasis. In appraising the military in the 1930's, due consideration must be given to the relationship between it and the political parties, and to a lesser extent and indirectly, the capitalists.

It must be remembered, too, that the constitution imposes a political disability on the members of the armed forces by depriving them of the right to vote as well as the right to run for office. Members of the armed forces cannot participate in political activities. Expression of political views in public in any form, spoken or written, is a criminal offense under the Army and Navy Penal Laws.<sup>10</sup> Consequently, participation in national

<sup>8</sup> Generals Akiyoshi Yamada, Aritomo Yamagata, and Iwao Ōyama were engaged in law codification, local administration, and police administration, respectively, while Admiral Tsugumichi Saigō was active in the Ministry of Education. See S. Miyaké, "Gumbatsu Gaikō no Seibai," *Chuō Kōron*, Apr., 1919, pp. 75-80.

<sup>9</sup> Beginning in 1922, able party men relentlessly assailed the independence of the supreme command on the floor of the Diet. Ikuzo Ōoka, who made a speech in the Diet on Feb. 7, 1922, was one of the earliest men to criticize the army. In the 45th Diet (1922), a bill to permit civilian appointments to the army and navy portfolios was passed in the lower house, but failed to become a law.

<sup>10</sup> Penalties are provided for in the Army Penal Law (Law No. 46, 1908), Arts. 103 and 104, and the Navy Penal Law (Law No. 48, 1908), Arts. 104 and 105.

affairs is possible only indirectly through the war and navy ministers, who are the legally constituted channels through which the army and navy may be heard. The tremendous importance of the war and navy ministers thus becomes quite evident.

The ten years beginning in 1931 have been, for Japan, far and away the most eventful decade in the twentieth century. It was a period replete with rapid and turbulent changes, critical problems, and difficult international situations. Ten cabinets rose and fell, and an eleventh was, at the end of 1940, leading the nation through a series of domestic and international crises fraught with gravest perils. Since the outbreak of the Manchurian Incident on September 18, 1931, the influence of the military in Japan's national affairs has been all too evident. The assassination of Premier Inukai on May 15, 1932, marked the death-knell of the political parties as an influence in national affairs, and the army thereafter took over its present position as the powerful "driving force" in Japanese politics.

It is apparent that the rise of the military power was assisted by a multitude of factors, especially economic and political. In the wake of the world depression of 1929, two dire consequences stood out conspicuously above all others: the debris of economic catastrophe and the unsavory record of political corruption. Too long had the political parties been preoccupied in a struggle for power among themselves, and now, in a critical moment, they did not possess the courage or the strength to alleviate economic difficulties; the bureaucrats were too weak and impotent to be effective.<sup>11</sup> Meanwhile, the people were desperate, and were willing to follow the leadership of any group that offered promise of relief. The army, which had long been smarting under the humiliating treatment accorded it by the political parties, now rose to retrieve its lost power and prestige and, at the same time, sought to bring relief to the people, particularly to the farmers and operators of small business and industrial enterprises who were writhing under a crushing economic burden of heavy taxes and insolvent perennial debts.

What served practically as the curtain-raiser for the military was the signing of the London Naval Treaty in 1930, which stirred up a storm of controversy between the Hamaguchi cabinet and the Chief of the Naval Staff. Ostensibly, the dispute was on the alleged encroachment upon the supreme command by the government, but in reality it was the beginning of a decisive contest between the political parties and the military. Events of far-reaching political consequence followed in rapid succession. The government incurred the vigorous opposition of the navy and enraged public opinion for signing and ratifying the treaty; a heated constitutional argument developed; and a series of political crises was precipitated. For

<sup>11</sup> For an appraisal of the political parties in the 1930's, see Chitoshi Yanaga, "Recent Trends in Japanese Political Thought," *Pacific Affairs*, June, 1940, pp. 130-131.

pushing through the ratification of the treaty, Premier Hamaguchi paid dearly with his life in August, 1931.<sup>12</sup>

Feeling continued to run high, and on May 15, 1932, Hamaguchi's successor, Premier Inukai, fell victim to a group of super-patriots comprising a preponderance of junior navy officers and army cadets. This was the first of a series of attempts by extremist groups calculated to bring about by an act of violence the downfall of the government as well as of the groups in power. The Blood Brotherhood League, closely associated with young naval officers, also made an unsuccessful attempt to liquidate the old influences, such as the political parties, financiers, and the privileged classes, including the palace advisers.<sup>13</sup> Another unsuccessful attempt to change the complexion of the government by violence was made in July, 1933, by the Godsent Troops (Shimpeitai). This plot was perhaps the most ambitious one, for the entire Saitō cabinet was to be annihilated by an aerial bombing of the Premier's residence while a cabinet meeting was in progress on July 11.

Mounting dissatisfaction among the extremists of the army and the rightists reached its climax in the most violent explosion of all, the February 26 incident of 1936, which was a "mutiny" led by a young army captain. Three key men—Lord Keeper of the Privy Seal Viscount Saitō, Inspector General of Military Education Watanabé, and Finance Minister Takahashi—were assassinated, while attempts on several others were unsuccessful.<sup>14</sup> In its conception and execution, the plot fell short of a *coup d'état* from the very outset; it was not intended to be a revolution, or even a setting up of a new cabinet of the conspirators' own choice. It was a direct action resorted to by a section of the extremist faction of the army and, at the same time, symptomatic of the general feeling of unrest which permeated the nation in consequence of socio-economic ills and maladjustments. Army authorities regarded the incident as an unpropitious affair and promptly took steps to correct and prevent conditions which gave rise to it.

Ever since the Manchurian Incident of 1931, the army has been in the limelight, and from 1932, beginning with the Saitō cabinet, the political parties, the bureaucrats, and even the palace advisers, could not ignore

<sup>12</sup> His death, which resulted from wounds received at the hands of an enraged assailant in Nov., 1930, foreshadowed the eventual collapse of the parties and the triumph of the military.

<sup>13</sup> Among those marked for assassination were Prince Saionji, Prince Tokugawa, Privy Seal Count Makino, Count Miyoji Itō; party leaders such as Suzuki, Tokonami, Wakatsuki, and Shidehara; financiers like Mitsui, Iwasaki, Sumitomo, Yasuda, Ikeda, Goh, and Kagami.

<sup>14</sup> Those who escaped assassination were Premier Okada, Prince Saionji, Count Makino, Grand Chamberlain Admiral Suzuki, and several business and financial leaders. Some 1,400 troops of the 1st and 3rd Infantry Regiments of the First Division were involved.



the power of the military, increasing rapidly under stress of domestic and international crises. The army has taken the initiative in proposing reforms, consistently and persistently, in every phase of national affairs. Its views and policies are revealed most clearly in a pamphlet issued by the press section of the War Ministry on October 10, 1934, entitled "The Essentials of National Defense and Proposals for Its Strengthening" (*Kokubō no Hongi to Sono Kyōka no Teishō*). It strongly deprecates the capitalistic system of free enterprise, in which ruthless and selfish pursuit of profits has led inevitably to an ever-widening gap between the rich and the poor, and which has created and aggravated class consciousness, if not actual class cleavage. It points out that while the total national wealth has been greatly increased under the system, unemployment and distress have increased also; the middle class has declined rapidly; the small business and industrial operators and farmers have been plagued with insecurity; and the orderly structure of the nation has been threatened by the weakening of its foundations. Rigid state control of national economy, together with an effective curbing of large accumulations of wealth, full development of the nation's natural resources and man-power, the "stabilization of national livelihood," and a more effective development of national education and spiritual training in the interest of the nation constitute the avowed objectives of the army, whose ideology is *laissez faire*, anti-individualistic, anti-communistic, and strongly socialistic.

Coalition cabinets which came into existence successively, beginning with the Saitō cabinet in 1932, were impotent and dominated by the army. Foreign policies were formulated on the basis of the army's recommendations; the size of the national budget was determined by the amount of military expenditures; and various domestic administrative reforms were attempted at the suggestion, if not at the insistence, of the army.

The voice of the army was particularly strong in the Hirota cabinet, formed in 1936 immediately after the February 26 incident. Hirota spent five days completing his cabinet, and succeeded only after he had reconsidered his choices for some of the posts in order to obviate army opposition. Then, too, he found it necessary to announce promptly a general policy of political renovation, outlined on August 25 by the cabinet as its seven cardinal policies.<sup>15</sup> On January 23, 1937, Hirota could not save his

<sup>15</sup> The seven cardinal policies of the Hirota cabinet were:

1. Realization of adequate national defense.
2. Renovation and improvement of education.
3. Adjustment of national and local taxation.
4. Stabilization of national livelihood.
  - a) Extension and perfection of health facilities.
  - b) Rehabilitation and promotion of rural economy, and encouragement of middle and small scale business and industry.
5. Expansion of industries and foreign trade.

cabinet from collapse when the army could not be placated. Two days earlier, Kunimatsu Hamada had made a speech in the Diet which was critical of the army. The war minister took umbrage and vigorously protested on the ground that its tone was insulting to the army, and promptly tendered his resignation.

An even more convincing demonstration of the power of the army took place in 1937 after the downfall of the Hirota cabinet. General Kazushigé Ugaki, designated by the Emperor to form a cabinet, struggled unremittingly for days to overcome army opposition, only to find his efforts in vain. Ugaki was *persona non grata* to the army, for, as war minister in the 1920's, he had been responsible for scrapping four army divisions—an act strongly resented by young army officers as being arbitrary and even dictatorial in the method used. Furthermore, in the opinion of the army, he was too close to the political parties, especially the Minseitō. General Hayashi, who formed a cabinet after General Ugaki abandoned his attempt, encountered no difficulty whatever, since he was acceptable to the army. It is interesting to note, however, that although the birth of the Hayashi cabinet was an indication that army views had prevailed, the Premier publicly pledged himself to maintain the parliamentary system of government “in strict conformity with the letter and spirit of the constitution.”

Time and again it has been demonstrated that the military can make or break a cabinet. The ordinances for the organization of the Ministries of War and Navy, as revised May 18, 1936, require that ministers and vice ministers shall be appointed from among the generals and admirals on the active list.<sup>16</sup> It was in 1900 that the second Yamagata cabinet originated this active status requirement. Until then, there was no specific requirement of any sort; indeed, Admiral Tsugumichi Saigō, navy minister in the second Itō cabinet held concurrently the war portfolio, and General Iwao Ōyama, war minister in the first Itō cabinet, was concurrently navy minister. In 1913, the first Yamamoto cabinet dispensed with the active service requirement, enabling officers on reserve and retired lists to become service ministers. This was done at the suggestion of Home Minister Takashi

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- a) Strengthening of control of electric power.
  - b) Self-sufficiency of liquid fuel and steel.
  - c) Assistance and control of foreign trade.
  - d) Encouragement of aviation and ocean transportation.
  - e) Encouragement of overseas settlements.
  - 6. Firm establishment of major policies regarding Manchukuo, including emigration policy and encouragement of investments.
  - 7. Revamping and improvement of administrative machinery.

<sup>16</sup> Enacted as Imperial Ordinance No. 63 and No. 64 for the Army and the Navy, respectively, under date of May 16, with the countersignature of the Premier and the ministers of war and navy, and effective May 18, 1936, the date of publication in the *Official Gazette*. See *Kampō*, May 18, 1936. No. 2810, p. 509.

Hara, a Seiyūkai party man. Army opposition to this change was vigorous but ineffective in the face of strong pressure from the political parties and from the Premier, Admiral Yamamoto. The present laws are a reversion to the original requirement of 1900, and were enacted by the Hirota cabinet in response to strong army demand. Consequently, they preclude the possibility of civilian appointments. And further to strengthen the position of the army, there has developed a practice since 1913 of determining matters of personnel administration such as appointments, assignments, promotions, and transfers of general officers in a conference of the war minister, the chief of staff, and the inspector general of military education. Since only an active general officer is eligible for the post of minister or vice minister of war, the Premier is at the mercy of the "big three" of the army, who can demand and obtain conditions as a *quid pro quo* for recommending a candidate for a portfolio.

For the first time since 1936, army influence, which not infrequently appeared to be inordinately exercised, was surprisingly unobtrusive when the Yonai cabinet was formed in January, 1940. This was prematurely hailed in some quarters as an indication that the army was relinquishing its strong position of leadership. Six months later, however, the army took an uncompromising stand. War Minister Hata tendered his resignation on July 16 with the curt announcement that his action was based on "the necessity of renovating the domestic political structure in consonance with the existing world situation." The Yonai cabinet was left with no alternative but to resign collectively, since the army was not disposed to furnish a successor. This was the latest in the series of cabinet shifts precipitated by the army, and virtually marks the beginning of the new national structure under the aegis of the Konoyé cabinet.

In the formation of the second Konoyé cabinet in July, 1940, the army reversed its attitude, openly expressing approval and assuring full coöperation.<sup>17</sup> There were several reasons for this change of attitude. First, and most important, was the fact that Prince Konoyé was thoroughly acceptable to the army, as to all other groups and factions, because of his dignity and position as well as his unimpeachable record of fairness and non-partisanship. Second, and highly significant, was the disappearance of political parties, which had long been the avowed enemy of the military. This unexpected development may yet change the attitude of the military so completely as to eliminate the long standing difficulty between the supreme command and the government. Third, the strengthening of the traditionally weak cabinet gives promise of a powerful executive which will bring about administrative efficiency that has been conspicuously absent for years. The army is watching with growing satisfaction the realization of a national structure capable of providing an adequate and efficient national defense system. Fourth, there is apparent among army

<sup>17</sup> *Tokyo Asahi Shimbun* (evening edition), July 20, 1940, p. 1.

and civilian leaders a strong conviction that national defense predicated upon total warfare can no longer be achieved with military strength alone. Naturally, the army is showing a willingness to work almost hand in glove with the government for the solution of difficult national problems.

Recently, the army has come to be invested with extensive powers in the formulation and execution of Asiatic policies, not only because it is felt that Japan's destiny lies on the continent, but also because her very existence may well depend upon the conditions prevailing there. Since the creation of the Manchurian Affairs Bureau, the war minister has served concurrently as its president. The commander-in-chief of the Kwantung Army is the Japanese ambassador to Manchukuo, whose well-being is believed to be interwoven inextricably with Japan's. The powerful China Affairs Board, headed by a general, has been entrusted with the important function of policy-making with reference to Japan's relations with China.

All the ideas and policies espoused by the army are based on and governed by one central point, the inescapability of total warfare. Consequently, the achievement of a total defense system has become the national goal. The establishment of the National Total War Research Institute on November 1, 1940, is of more than passing interest. The noteworthy achievements of the army in domestic affairs in the last few years have been motivated by anxiety for national security. The Planning Board, which is entrusted with the task of planning, synthesizing, coördinating, and controlling national policies, is undoubtedly one of the most outstanding achievements sponsored by the army. No less important was the creation in 1939 of the Welfare Ministry, which has since become one of the most important departments in the promotion of national welfare. Social legislation has been accelerated as never before, and the general welfare of the people has been receiving large attention since 1936.

As a corollary of total defense efforts, coördination between various administrative offices and agencies is being materialized rapidly for the sake of efficiency. As part of this program, the number of commissions and boards has been materially reduced. On July 19, 1940, at the conference of four ministers, the premier, the foreign minister, the war minister, and the navy minister, it was agreed unanimously that a rational adjustment in the relationship between the supreme command and general state functions should be effected speedily for the purpose of coördinating war and defense efforts with national administration. It is significant that the six-point program of the Konoyé cabinet adopted on July 26 represented in essence these coördination efforts between the government and the military. Practically all the major policies advocated by the army since 1936 were incorporated in it.<sup>19</sup> Simultaneously with the coördination

<sup>19</sup> The six-point program of the Konoyé cabinet is as follows:

1. Establishment of a "national defense state."

efforts, Prince Konoyé has begun to evolve a stronger cabinet. Several innovations have already been made to this end. An imposing cabinet council of ten members was created, on October 3, to advise the cabinet in national affairs and foreign relations.<sup>20</sup> On October 13, a highly centralized cabinet information bureau was organized, giving the government virtually a Ministry of Information.

Since the quasi-independent position of the military is not based on any constitutional provision, to change its legal status does not entail too great a difficulty. However, in the present state of affairs it is most unlikely that any such change will be attempted. Furthermore, the cabinet and the military are beginning to see eye to eye in national problems, particularly in the basic policies of national defense. Consequently, coördination between the government and the supreme command has been greatly facilitated and is being worked out in a very informal manner. For instance, the Imperial Headquarters Liaison Conference, an informal and extra-legal method used for the first time by the first Konoyé cabinet, has been revived. An even more informal method was initiated in the form of a round table conference (*kondankai*) of the cabinet and the supreme command group which met for the first time on November 28.<sup>21</sup> In the newly organized all-embracing political structure known as the Imperial Rule Assistance Association, the army and the navy are represented on the important advisory council by the vice ministers and directors of the military and naval affairs bureaus. These recent developments all point to closer coöperation, collaboration, and coördination.

Premier Konoyé has expressed his conviction that the problem of co-ordination between the government and the military is not one of machinery or organization, but rather one of satisfactory relationship between men comprising the cabinet and the camp. It would not be surprising, therefore, if the supreme-command issue were to be settled by the adjustment of personnel relationship rather than by formal, legal changes. It is very likely, too, that national defense requirements will minimize, if not actually liquidate, this vexatious problem, which, in the past, has stood ominously in the path of party government.

CHITOSHI YANAGA.

*University of California.*

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2. Establishment of autonomous diplomacy in East Asia.
  3. Establishment of an East Asia economic bloc comprising Japan, Manchukuo, and China as a single unit.
  4. Establishment of a new national structure.
  5. Revamping of education.
  6. Revamping of foreign trade and transportation policies.

<sup>20</sup> The members are General Senjūro Hayashi, Admiral Kiyotané Abo, Chuji Machida, Fusanosuké Kuhara, Chikuhei Nakajima, Kanzō Adachi, Kazue Shōda, Seihin Ikeda, Baron Seinosuké Goh, and Kōzui Ōtani.

<sup>21</sup> *Tokyo Asahi Shimbun* (evening edition), Nov. 29, 1940.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

Dr. Rudolf Holsti, former foreign minister of Finland, will return to Stanford University in 1941-42 as acting professor of political science.

At Stanford University, Professors Philip W. Buck and Charles Fairman have been promoted to full professorships, and Dr. John W. Masland to an assistant professorship.

Professor Herman Finer, of the London School of Economics and Political Science, gave a course on "Comparative Administration in War-time" at the University of Chicago during the spring quarter, 1941, and in addition gave a series of public lectures on the same topic. Professor Finer has recently published a book on municipal trading in Great Britain.

Four lectures were delivered by Commissioner Arthur S. Flemming, of the United States Civil Service Commission, at the University of Chicago during April. The general subject was "Civil Service Administration in a Period of Crisis."

Dr. F. F. Blachly, of the Brookings Institution, and Professor E. Allen Helms, of Ohio State University, will be visiting members of the department of political science at the University of Illinois during the 1941 summer session.

The annual Edmund J. James Lecture on Government at the University of Illinois was delivered on March 12 by Dr. Hu Shih, Chinese ambassador to the United States. His subject was "Historical Foundations for a Democratic China."

Professor George C. S. Benson has resigned his position at the University of Michigan to accept a professorship at Northwestern University.

Professor Edward Mead Earle, of the Institute for Advanced Study, Princeton, has recently returned from an extended trip to the American naval and air bases in the Caribbean region.

Professor Charles C. Rohlfsing, of the University of Pennsylvania, has been appointed to the Motion Picture Panel of Arbitrators under the United States Supreme Court consent decree.

Professor Lashley G. Harvey, of the University of New Hampshire, has become executive secretary of a newly formed New Hampshire Municipal Association.

Professor H. S. Quigley, of the University of Minnesota, gave an address on "America's Program in the Pacific" at the Northwest Conference of the International Relations Clubs at Caldwell, Idaho, held on March 21 and 22.

Professor E. M. Kirkpatrick, of the University of Minnesota, was one of the speakers at the annual conference of the North Central Division of the Iowa State Teachers' Association at Mason City, Iowa, March 20-22.

Mr. Ira Polley, teaching assistant in political science at the University of Minnesota, has been awarded a Social Science Research Council pre-doctoral field fellowship for 1941-42.

At the University of Washington, Professor George E. Taylor, who conducts courses in political science, and who is also head of the department of Oriental studies, has been advanced to a full professorship.

Professor Paul A. Palmer, of Kenyon College, has been appointed acting associate professor at Stanford University for the year 1941-42, and will offer courses in political theory.

During the second term of the coming summer session, Professor W. Brooke Graves, of Temple University, will offer courses on state government at the University of Texas.

A short course on civil service law and procedure, and another on police administration, were directed by Professor Harvey Walker at Ohio State University in March.

Professor Joseph S. Roucek, of Hofstra College, led a round-table on "World Revolutionary Forces," at the Northwest Institute of International Relations, held at Reed College June 15-25, and will serve as visiting professor of social sciences in the summer session and post-session of San Francisco State College.

Dr. Gordon Skilling, of United College, Winnipeg, Canada, has been appointed to an assistant professorship of political science at the University of Wisconsin, and, aside from a new course on Canadian government and politics, will devote his time to courses on international relations.

Dr. Carl H. Schaaf, of the Richmond division of the College of William and Mary, has accepted an appointment for the summer as research consultant in the division of the budget of the state of Virginia.

Professor Thomas S. Barclay, of Stanford University, will teach during the summer session at Cornell University; Professor Philip W. Buck will offer courses in both the University of California at Berkeley and the

Western Summer School for Workers; Dr. John W. Masland will participate in the Institute of International Relations at Mills College; and Professor Graham H. Stuart will teach in the summer session at the University of Utah.

Professor Ford P. Hall, of Indiana University, has been appointed acting director of the Indiana State Bureau of Personnel. He will continue in this capacity until a director is selected under the State Personnel Act passed during the recent session of the Indiana General Assembly. He also acted as technical adviser to the Indiana Merit System Association which successfully sponsored merit legislation at the last session of the legislature.

The catalogue of the University of Washington for 1941-42 announces a new major in Pan-American studies for undergraduates, under the general direction of Professor H. B. Densmore, chairman of General Studies. The departments of economics, geography, history, political science, and Spanish are coöperating in presenting a number of relevant courses. Professor Linden A. Mander is in charge of the political science offering.

A meeting of the Pacific Southwest Academy, held at Los Angeles April 18, was devoted to the general subject of "Los Angeles: Preface to a Master Plan." Professor Raymond G. McKelvey, of Occidental College, served as program chairman.

At its meeting of April 5-6 in Columbus, the social science section of the Ohio College Association devoted one session to "Is Democracy Threatened by Executive Domination?," and another to "The International Situation." Professor Roy V. Sherman, of the University of Akron, was elected president for the ensuing year and Miss Mona Fletcher, of Kent State University, was reëlected secretary-treasurer.

Guggenheim fellowships have been awarded to Professors Francis D. Wormuth, of Indiana University, for research in political theory, with special reference to the separation of powers, and Eugene A. Forsey, of McGill University, for a study of cabinet government in Canada and its provinces since 1867.

The Bureau of International Research at Harvard University and Radcliffe College has given a grant to Professor H. Duncan Hall to study Anglo-American coöperation during and after the present war as a nucleus for a future world order. Professor Duncan Hall will give three national broadcasts in June from Ottawa, Canada, for the Canadian Broadcasting Corporation, on the subject of "Psychological War and Morale."



A Public Affairs Conference on National Preparedness held at Principia College, Elmhurst, Illinois, May 2-3, was participated in by Professors William Y. Elliott of Harvard University, John T. Salter of the University of Wisconsin, Harold S. Quigley of the University of Minnesota, and Dr. Brooks Emeny of Cleveland, Ohio.

The first issue of a new journal to be known as the *Far Eastern Quarterly* is scheduled to appear in the autumn. The managing editors will be Professors Hugh Borton and Cyrus H. Peake, of Columbia University, and Earl H. Pritchard, of Wayne University. Professors Kenneth Colegrove, of Northwestern University, and Harold S. Quigley, of the University of Minnesota, will be members of the editorial board.

The forty-fifth annual meeting of the American Academy of Political and Social Science, held at Philadelphia April 4-5, was devoted to the general subject, "Defending America's Future." The numerous papers presented will appear in a future issue of the *Annals*.

The University of Michigan has announced a "graduate study program" on "Public Policy in a World at War," extending through the period of the summer session. Among special lecturers will be Professors Edward S. Corwin of Princeton University, Max Lerner of Williams College, Dr. Brooks Emeny of Western Reserve University, and Dr. Hu Shih, Chinese ambassador to the United States. Professor Lawrence Preuss is a member of the committee of management.

The Seventeenth Institute under the Norman Wait Harris Memorial Foundation at the University of Chicago will be held July 7-16, and will be devoted to the subject, "The Political and Economic Implications of Inter-American Solidarity." Participants will include distinguished scholars and representatives of Latin American countries as well as of Canada and the United States. The Institute will consist of round-table discussions participated in by a limited number of invited guests, and of public lectures which will be available in a volume to be issued in the fall of 1941.

The Midwest Political Science Conference held its third annual meeting May 19-21 at Pokagon State Park, Indiana, with approximately 115 persons in attendance. An introductory session on "Political Science as a Profession" was followed by discussion meetings dealing with "Some Problems of Teaching Constitutional law," "The Rôle of the Republican Party in the Near Future," "The Implementation of the Peace," and "Some Recent Trends in Public Administration," and by more general sessions on "Some Organized Governmental Research Programs in the Middle West," "Some Problems of National Defense," and "The Legislative Process."

At the twenty-second annual meeting of the Southwestern Social Science Association, held at Dallas on April 11-12, with Professor Cortez A. M. Ewing, of the University of Oklahoma, as general program chairman, the Government Section devoted sessions to "Man in the Total State," "Technique of Manufacturing Consent," and "The Administrative State," with S. B. McAlister, of North Texas State Teachers College, William H. Edwards, of New Mexico State College, and John H. Week, of the University of Oklahoma, respectively, serving as section chairmen.

The third annual meeting of the Pennsylvania Political Science and Public Administration Association was held in Harrisburg, April 18-20, with a registered attendance of sixty-five. The program, arranged by a committee under the chairmanship of Professor Roger H. Wells of Bryn Mawr College, included general sessions on legislation, civil liberties, and national defense, with five round tables holding two sessions each. These dealt with political parties, teaching problems, public assistance, and reporting, research and publications. At the concluding business session, the following officers were elected: president, Professor Charles C. Rohlfing, University of Pennsylvania; vice-president, Dr. M. Louise Rutherford, deputy attorney general, Department of Justice, Commonwealth of Pennsylvania; and secretary-treasurer, R. Jean Brownlee, of Philadelphia. New members of the Executive Council are: Professors W. Brooke Graves, Temple University, retiring president, Benjamin H. Williams, University of Pittsburgh, and John H. Ferguson, Pennsylvania State College. Among the recent activities of the Association may be mentioned a survey of the content of political science course offerings in Pennsylvania colleges and universities, by Professor Ferguson, and the compilation of a classified bibliography on Pennsylvania state and local government, by the Committee on Research, under the chairmanship of Professor James C. Charlesworth, of the Institute of Local and State Government, University of Pennsylvania. The bibliography will be published shortly by the Institute. The Association is also sponsoring the organization of local public administration societies in Philadelphia, Harrisburg, and Pittsburgh.

[*Erratum.* In line 7 on page 382 of the April issue of the REVIEW, for "5.1 per cent" read "5,190."]

## BOOK REVIEWS AND NOTICES

*Scholasticism and Politics*. BY JACQUES MARITAIN. (New York: The Macmillan Company. 1940. Pp. 248. \$2.50.)

There can be little doubt that totalitarianism has greatly profited from that value-emptiness which has been the result of positivism and relativism in the social sciences. If it is impossible to demonstrate priorities in the realm of values by scientific method, then totalitarian values are, scientifically speaking, on the same level with any other. All who, misled by her triumphs in other fields, look to science for help against fascist ideologies are thus disarmed before the fight begins. Yet why should fascism alone profit from this situation? Since, in any event, we must choose according to non-scientific criteria, why not choose the Gospel? Faith will give us certainty of values, supplemented but not replaceable by science. Do enter, then, St. Thomas, and repeat the greatest union ever consummated in the history of thought, i.e., the marriage between faith and reason. With science now becoming modest in the realm of values, the door is wide open—wider than in four centuries.

This historical situation lends particular importance to Jacques Maritain's philosophical mission. His philosophy of the state is firmly based on the Christian set of values, but, in the Thomist spirit, supported and permeated by reason. Maritain, however, like St. Thomas, regards that which he offers as real science. For science in the Thomist sense includes supra-rational kinds of wisdom. This genuine sense of science should be restored, he demands, and we should "realize what misery it is for the mind to reduce science to the type of empiriological science, i.e., the physico-mathematical sciences and the sciences of phenomena." There "must" be such a science, he exclaims, a knowledge in which the intellect is "on the inside." The intellect "sees." Metaphysics is science in this ampler sense. The "mystery of abstractive intuition" makes the metaphysician. Kant did not have it, but St. Thomas did. Even between physics and metaphysics, there is a philosophy "of nature" which, without entering into metaphysics, at least reaches *being* itself, beyond the mere realm of phenomena.

In the opinion of the reviewer, this conflict on the meaning of science should be appraised for what it really is, namely, a dispute between those who care for full intersubjective demonstrability of their contentions and those who do not. In the realm of intuition, only a small area seems to be open to such demonstration. Yet this fact alone does not exclude the truth of the balance, and even the intersubjective area may be expanded.

It would be vain to try to present the essence of this book in a few lines. Its greatness is unreviewable because of the abundance, the fullness, the meatiness of every sentence. What Maritain has to say on person and individual, on humanism, on freedom, on Marxism and Freudianism, is

among the very best of things ever said on these subjects. The following remarks are aimed at serving the particular interests of readers of this periodical. Maritain wants to replace the Rousseauist democracy of the individual and of numbers by a democracy of the *person*. "I am wholly an individual, by reason of what I receive from matter, and I am wholly a person, by reason of what I receive from spirit." He demands not only a mere weakening of errors, but a "complete turn toward spirit." To make a democracy of the person possible, "men must be governed as persons, not as things." Such a democracy is inconceivable without the "energies of the Christian leaven," but also without *authority*, that is, the legitimate right to be obeyed. Authority must be just to be authentic. That justice and not number should govern, is truly democratic. For the origin of the democratic sense is not the Rousseauist desire "to obey only oneself," but rather the desire "to obey only what it is just to obey."

The difficulty of how to determine justice beyond the positivistic concept is, to a certain degree, solvable under Maritain's assumption, as he is able to refer to the Gospel for the basic elements. More difficult remains the perennial problem of how we can establish "authority" without either following the law of numbers or inviting despotism. Maritain would not abolish universal suffrage, whose symbolic value he recognizes. Nor would he suppress multiple parties, whose educational services should be preserved. Yet he would render the state and government independent of political parties. He would reduce the rôle of elected assemblies—which he wishes to be pluralistic in character—to an advisory capacity and to the ratification of proposals made by the higher authority, including proposals on appointments. Representative assemblies would have sovereign decision only "in certain cases concerning in a major manner the life of the nation." This scheme lies open to ardent criticism on behalf of democratic tradition and eternal vigilance. But we would not do justice to Maritain in focusing on practical details which, contained in a mere footnote, do certainly not present the center of his calling and interest. The book's paramount value lies in its profound presentation of the reasons which cry for a more perfect union between Christian, humanitarian ideals and democratic institutions, rather than in these practical suggestions. As the book proceeds, we are gradually led from humanism and Christianity in general to the doctrines of the Catholic Church and suggestions for the life of a Catholic citizen. I cannot but feel this to be a narrowing down from the wide vista opened up in the earlier chapters. But this regret should not trouble us too much. We may read the final chapters as a welcome source of information on Catholic topics, while we enjoy the first in a more universal spirit, unconcerned with the shades of denominations, Christian or other.

ARNOLD BRECHT.

*New York City.*

*The Dual State; A Contribution to the Theory of Dictatorship.* BY ERNST FRAENKEL. Translated from the German by E. A. Shils, in collaboration with Edith Loewenstein and Klaus Knorr. (New York, London, Toronto: Oxford University Press. 1941. Pp. xvi, 248. \$3.00.)

This volume gives an account of the basic legal and constitutional principles of the Third Reich. Its author practiced law in Berlin between 1933 and 1938, and in consequence was familiar with the actual working of National Socialist law. In writing the book, he has been able to use the reports of the leading decisions of German courts during the years mentioned. The work falls into three parts. In the first, the author offers an account of the principal decisions having to do especially with legal restraints upon executive actions and with the security of property rights. The second part deals with the legal theory of National Socialism. The third contains the author's analysis of the National Socialist state from the point of view of German constitutional history, and of its economic and sociological background.

The first part of the book is particularly interesting and valuable because it contains a sort of information not readily available outside of Germany and not usually known to readers who have little acquaintance with German law. In part, the conclusion reached is familiar enough: Constitutional guarantees, legal restraints upon the police power, and judicial review of the acts of the police have completely disappeared from German law in all cases that are regarded as having political significance. "The political sphere is a vacuum as far as law is concerned" (p. 3). This, however, tells only part of the story. After examining the decisions relative to the rights of property, the author concludes: "The property system of Germany has not been transformed by the National Socialist catchwords. Private property still enjoys the protection of the courts from official interference, except where political considerations are involved" (p. 78). This conclusion is supported by an examination of decisions bearing upon the freedom of enterprise, the sanctity of contracts, the regulation of competition, the control of employers over labor, and the protection of rights to intangible interests. In all these cases, it is necessary, of course, to exclude from consideration the property rights of Jews.

The leading constitutional characteristic of the Third Reich is, therefore, an unlimited arbitrariness and extra-legality of political power side by side with a legal system which is mainly devoted to safeguarding the interests of private property; it is this which accounts for the title of the book. The author distinguishes on the one hand what he calls the "Prerogative State"—the political or governmental system which is altogether unchecked by legal guarantees—and the "Normative State"—an administrative body with elaborate powers for upholding a legal order embodied in statutes, decisions, and administrative ordinances. The chief

characteristic of National Socialist dictatorship is the combination of these two states in what the author calls the "Dual State."

The parallelism of these two elements in the Dual State, however, is not accidental; it is necessary for the maintenance of capitalism in Germany. The author holds, therefore, that capitalism in essence has been maintained, even in spite of all the limitations and qualifications of property rights that political control has imposed upon capitalists. Obviously, no such claim could be made if capitalism connoted *laissez faire*, but the author points out that no such system existed even under the Weimar Republic. German capitalism had already reached a monopolistic stage, and National Socialism has extended and multiplied controls whose like already existed. The author's chief reason for regarding this organized and regulated system as capitalism lies in the disparity between the treatment of labor organizations and the interest-groupings of other economic classes; the latter have been controlled, but the former have been destroyed. The Dual State, therefore, reflects the stage of capitalistic development that has come to prevail in Germany, a stage which requires the irrational and arbitrary procedure of the Prerogative State, but which cannot dispense with the rational legal order demanded by an economy still largely conducted by exchanges of private property. The sociological chapter with which the book ends discounts the claim that National Socialism has materially changed the class structure of German society. The author seems to regard it as an illogical and unstable combination, apparently as a forcible interference with a process that might peaceably have eventuated in some kind of socialism. This part of the book is not much elaborated. The account of the National Socialist legal system is of great interest and value.

GEORGE H. SABINE.

*Cornell University.*

*The Redemption of Democracy.* By HERMANN RAUSCHNING. (New York: Alliance Book Corporation. 1941. Pp. 243. \$3.00.)

In his earlier books, the author made all-important contributions toward an understanding of the German Revolution. Today, the concepts whose purpose he has designated by the word "nihilism" have been so widely accepted that we are likely to forget that he first expressed them and documented them with a wealth of evidence. For far too long, Hitlerism had been conceived of as a traditionalist, nationalist, "Prussian," or at least "capitalist," movement, the continuation of ancient struggles by the state against the people, the rich against the poor. Rauschning showed that it was a phenomenon *sui generis*. The German leaders are concerned neither with capitalism nor with socialism, nor with any of the other ideological antitheses that dominated the nineteenth century. They serve

no idea. They serve only *power*—its enjoyment, its maintenance and expansion by the methods of dissolution. They are enemies of the past and of traditional values, as they are enemies of truth. They are nihilists.

Rauschnig's performance in his first book was essentially descriptive and negative. Necessarily, however, he also had inherent positive tendencies. Defense and counter-attack are determined by the nature of that against which one is defending oneself. If it uses for its own purposes demands and exigencies of contemporary history, the defender too must have the will to respond to these, and better than it. The principle of evil must be opposed by that of good—compromise against absolutism, federalism against totalitarian state, morality against amorality, tradition against hostility to history. A new form of *conservatism* is readily discernible in Rauschnig's earlier writings—a conservatism, to be sure, that is directed neither against democracy nor against socialism. Our own age is not dominated by the conflict that dominated the age of Prince Metternich. Metternich's foes were the democrats and nationalists; Rauschnig's foes are the men of the totalitarian state—the men of nihilism.

To this conflict dominating our own age, the new book brings a wealth of divergent observations. They are under the influence of the war, of public life in Britain, and of British tradition, especially the tradition of Edmund Burke—a coincidence that may be called felicitous despite its tragic implications. Unfortunately, however, *The Redemption of Democracy* calls for almost the same work that Rauschnig himself performs with regard to political actuality. The book contains a maze of contradictions, of questions and counter-questions, of skimmed and abandoned possibilities for thought that must first be clarified and organized on their own. The diary-like notes lack any real order. The thoughts are put down just as they surged into the author's head. Warnings, categorical statements, prophecies, desires, and fears merge one into the other. In unpracticed heads that cannot reduce confusion, this results in misinterpretations.

Rauschnig is no reactionary. One of his important discoveries, rather, is that every age must create its own political categories, and that "reaction" and "revolution" today have lost their old meaning. Hitler has discredited the idea of revolution. Justice and liberty are not necessarily linked with this idea, nor are they so today. If we now agree that this is true of the present—is it true also for all our yesterdays? Can the present unmask the past? What is the connection between the Revolution of Nihilism and the revolutions of the eighteenth century—continuation or hostile repudiation, necessity or liberty, confusion, crime? That is a question of vast philosophical difficulty—a question that cannot be hurriedly posed and disposed of. Because he is an enemy of Hitler, Rauschnig oc-

asionally seems to condemn in one fell swoop even the French Revolution, "progress" and "enlightenment"—all free science since the end of the Middle Ages. Then again he praises directed progress and liberty. But this contradiction is not spun out into agreement; it is merely balanced by means of countless "ifs" and "buts." It is a tortuous to and fro of thought processes.

A wealth of positive presentation is to be found in *The Redemption of Democracy*. As an expert on Nazi technique, the author is unexcelled. Americans particularly should read what he has to say about Hitler's American plans and rabid visions. Beyond that, Rauschning certainly must be counted among the most intuitive living writers on politics. His thoughts revolve around central problems—state and morality, technological organization, power, liberty. These are problems of fearful complexity—so complex, indeed, that the author at moments seems to give way to the temptation of solving them by the simple *dicta* that no "ism" holds salvation and that government ought to be as good, modest, limited, and effective as possible. In any event, we could have wished that the work had been given a more disciplined form. Whoever writes political philosophy today touches red-hot iron; and if the new conservatism is some day to prove its truth in practice, it will have to be very precise in its self-imposed distinctions from the old.

GOLO MANN.

*Princeton, New Jersey.*

*Man and Society in an Age of Reconstruction.* BY KARL MANNHEIM. (New York: Harcourt, Brace and Company. 1940. Pp. xii, 469.)

*The Contempt of Freedom; The Russian Experiment and After.* BY M. POLANYI. (London: Watts and Company. 1940. Pp. ix, 116.)

The book of Professor Mannheim is a revised and considerably enlarged edition (more than one-half of the book is completely new) of the German original, *Mensch und Gesellschaft im Zeitalter des Umbaus*, published in Leiden in 1935 and discussed in Volume XXX of this REVIEW (1936). The essence of the book and its main argument have remained practically the same. It is a plea for totalitarian planning of society. All the key positions must be in the hands of the state, all the functions of society must be planned according to an all-comprehensive scheme. The forces of mass society, *laissez faire* economy, and the revolution in technology have created more and more chaotic conditions, which cannot be cured with the remedies of nineteenth-century liberalism.

Nothing is altered in this central thesis, yet the new edition shows two very advantageous changes. The one is that the English translation has made its style clearer and less involved (though several of its Anglo-Saxon



critics consider it even now difficult to read); the second is that the author envisages his problem with a greater optimism. The first edition was written in the light of his experiences in feudal Hungary and in pseudo-democratic Germany, harassed by the brutalities of the class struggle and by the rigidity of the Marxian and Prussian ideologies. On the other hand, the second edition is deeply influenced by the author's impressions in the classic land of economic and political liberalism.

Whereas in the first edition one felt the gloom of the liberal society doomed to perish (though Professor Mannheim never asserted it openly), in the second edition there is hope (though not a very strong or convincing hope) that the totalitarian society may be reconciled with certain fundamental notions of freedom. As a matter of fact, the author is not less totalitarian than the Bolsheviks or the Fascists. Yet his spirit is radically opposed to them on two points: The one is that he regards "freedom and personal responsibility [the] highest of all values"; the other, that he is deeply aware of the fact that totalitarian planning is not simply the creation of a collectivist economy and of an administrative system. He shows with lucidity and force that all totalitarian schemes based exclusively on power, violence, and propaganda would mean a total collapse of all the values of our Western civilization. Therefore, the main task of the social scientist and the practical statesman is to reconcile those values with the absolute necessities of totalitarian planning.

The bulk of the volume consists of a number of essays which show the enormous complexity of the problem and offer certain solutions advocated by sociologists, economists, educators, psychologists, and practical statesmen for various aspects of planning. With a high degree of objectivity, Professor Mannheim does not hide the difficulties of the new world order. It is clear to him that without the remaking of human nature, without "planning the planners," without creating a vast public opinion which would accept spontaneously the totalitarian order, and without planning for zones of freedom in the framework of totalitarian regulation, the result cannot but be disastrous. In his argument, he comes near (though with certain hesitation, and sometimes with disquieting restrictions) to the reintroduction of a bill of rights into the totalitarian society: "The various historical interpretations of freedom, freedom of movement, freedom of expression, freedom of opinion, freedom of association, freedom from caprice and tolerance, are all special obligations which must be met by the new society. For naturally the advent of planned freedom does not mean that all earlier forms of freedom must be abolished" (p. 379).

Admitting this, it seems to us that Professor Mannheim has here broken down a door which was already open. The present distrust of totalitarian planning is not motivated (at least among thinking and sincere persons) by their adherence to an orthodox dogma of *laissez faire*, but by

their conviction that totalitarian planning would destroy the values without which civilized life would be worthless. In dispelling this fear, based on a large number of experiences and psychological observations, Professor Mannheim appears not so successful as in showing the essential conditions of totalitarian planning. Only by making freedom a thoroughly vague and absolutely relativistic concept, by overstressing the malleability of human nature, by exaggerating the importance of the *mores* to the detriment of the initiative and creative activity of the individual, by making undue allowances for the so-called achievements of the totalitarian systems (he overstates the efficiency of techniques, propaganda, and education and scarcely mentions bloodshed, terror, and the strangling of public and private liberties which are the real foundation of the totalitarian systems), only so can he arouse a false feeling of security for the safeguarding of human dignity under the totalitarian state. Yet by clearly stating the intricate aspects of totalitarian planning, by discussing the ideas of many thinkers in this line (as a matter of fact, he offers a 72-page bibliography, carefully selected, as an appendix to the volume), and by a cautious and penetrating analysis of certain historical and present-day experiences, Professor Mannheim offers a volume which will for a long time remain an outstanding achievement in this field.

It is essentially the point unsolved in the book of Dr. Mannheim upon which the series of essays presented by Professor Polanyi is concentrated. Though an outstanding physicist at the University of Manchester, Dr. Polanyi has devoted a great part of his energy during the last decade to our disconcerting social problems, and has studied the Russian experiment several times on the spot. On the basis of his inquiries he came to the conclusion that our Western civilization is headed towards catastrophe: "The progressive minds were so fascinated by the prospects of the revolution in Russia that they had little interest left for the fate of traditional liberties. In fact, they were inclined to look at these with contempt, to consider them as ineffectual and hollow phrases as compared with the solid realities of the coming social revolution" (p. v).

In the first of his essays, Dr. Polanyi gives a thoroughgoing refutation of the ideas of one of his colleagues, Professor Bernal, who advocated a kind of planned science, with emphasis on its social and practical aspects. The author shows how the following of such a scheme would mean the merciless destruction of intellectual liberty and how pure science is a fundamental necessity even from the point of view of concrete practical achievements. In his second essay, on "Collectivist Planning," he stresses the essential difference between totalitarian and regulative or supervisory planning. He shows that an all-pervading totalitarian planning would destroy itself, whereas the second type of planning is possible and an imperative demand of our time. In a third essay, he gives a penetrating

analysis of the Soviet economy. He demonstrates, both deductively and inductively, the intrinsic antagonisms of this system and the deadlock to which it would lead if its theoretical dogmatic principles were not neglected or mitigated at many points. In a last essay, on "Truth and Propaganda," he gives an acute criticism of the much heralded book of the Webbs on *Soviet Communism*. He shows how Soviet blueprints were interpreted here with the logic of wishful thinking.

When the latter two essays were published, they aroused considerable antagonism, due to the preponderance of admiration for communism, then fashionable among intellectuals. But important later contributions have substantiated the main points of the criticism. Though refreshing and unpretentious in the handling of its problems, the little volume is more than the brilliant *aperçus* of a distinguished layman; it is a contribution of unusual acumen and originality, which may be helpful for the reconstruction of a truly liberal political philosophy, pointing towards decisive social reforms.

OSCAR JÁSZI.

*Oberlin College.*

*The Majority of the People.* BY EDWIN MIMS, JR. (New York: Modern Age Books, Inc. 1941. Pp. 314. \$2.75.)

It is the function of each generation of scholars to reinterpret the past to its own satisfaction. This volume takes its place among a number of other works which evaluate anew some of the basic principles stated by leaders of American political thought. Professor Mims approaches with energy and epithet the task of defending the place of the concept of majority rule in American thinking. He believes, apparently, that the efforts of the last few years to break down barriers to the direct and immediate reflection of majority sentiment in government is but a rejuvenation of what has been the real American tradition. He has thus produced a provocative and controversial study of the American political mind.

The book is built around a study of functional political conceptions, such as sovereignty, constitution, court, law, liberty, the individual, property, equality, and the people. In dealing with each of these ideas, an effective selection of quotations is drawn from the writings of distinguished American political writers. The basic proposition through these separate studies is, approximately, that the early acceptance of the sovereignty of the people, that is, the majority, was perverted by those seeking to protect minority, i.e., property, rights. On the contrary, recent leadership and policy is a return to the first and great American tradition. He states, however, that the concepts treated "are capable of both a majority-rule and a minority-rights reading. We have seen how the fact of this double

line of ideological precedents has been conducive to evasiveness and ambiguity in our political thinking" (p. 239). When the author argues, for example, that Hamilton was a tricky lawyer using in *The Federalist* the armature of democracy to "smear" democracy itself, it will perhaps be more provocative than convincing. To argue that Hamilton created the principle of judicial review "out of thin air" is, to say the least, a controversial proposition (p. 108).

Thus, the reader would be interested in a fuller discussion of the right of the majority when it goes beyond the Constitution. Does the Constitution "constitutionalize" a right of revolution? Does not the statement (p. 275) that the power of the patriotic majority is "limited only by the stipulation that minority individuals shall be unrestrained in their efforts to form a new majority" lead back to the very constitutionalism which the author deplors? What is the basis of such a limitation on the majority? One might ask whether there are other "natural" rights than that of the majority to control, since other rights are mentioned in bills of rights. The author hardly shows that early American leaders who believed in the sovereignty of the people were uninterested in the constitutional protection of minority rights, and he denies in effect that the Constitution reconciles majority will and minority or individual rights.

Professor Mims comes to the conclusion that the majority today is the proletarian majority; that this majority must follow a "militant leader"; and that an "arbitrary will" is essential in democratic government (pp. 293 ff., 149). The reviewer believes he underestimates the interest of the conservatives in the rule of law; contrary to those like Lederer who fear the mass-state, Mims seems to look forward to it with pleasure. If the author's emphasis on the "leader" is disquieting, his volume contains an account of the frontier theory in American thought which should be highly provocative (pp. 208 ff.), an excellent treatment of the sociology of leadership and the dictatorship of the proletariat (pp. 243 ff.), and a critical acumen which drives the most careless reader to seek for the inarticulate major premise which may be "surplus value" as much as "majority will."

FRANCIS G. WILSON.

*University of Illinois.*

*Introduction to Politics.* BY ROY V. PEEL, JOSEPH S. ROUCEK, AND OTHERS. (New York: Thomas Y. Crowell Company. 1941. Pp. xvi, 587. \$3.75.)

The stated object of this book is to satisfy the demand for an appropriate introductory textbook in the field of political science. With this in mind, the editors, Professors Peel and Roucek, courageously undertook a coöperative scholarship project wherein a number of collaborators joined their efforts with those of the editors to produce this volume. Each

collaborator contributed a chapter summarizing the materials in a specific given area—presumably an area for which he possesses unusual competence. This procedure was based on the assumption that in a comprehensive study no one or two persons could accumulate and digest facts and present conclusions relating to them as successfully as could be done by some twenty-five experts. The editors, in addition to contributing two chapters each to the body of the text, assumed the task of bringing consistency and systematic synthesis to the entire volume of materials and viewpoints.

The volume presumes to cover all fundamental aspects of politics. Nor is it confined to a treatment of domestic politics. Comparative politics and theory and much comparative history permeate the book. Legalistic and functional treatments are not abandoned, but certainly they are thoroughly subordinated to "the understanding of political realities" through a study of the social forces which bear on the political processes. "For the editors and co-authors believe most sincerely that any uplifting of politics, any kind of education for American citizenship, any effort to preserve our democracy, must be based on the understanding of political realities and not on fairy-tales. It is true that our children ought to know the phrasing of our Constitution. But it is equally, if not more, important that our future citizens should also know how this great document has survived the test of time by its adaptability, by the interpretation of its clauses, by the observance and non-observance of its various parts, and what were the social forces in that process. Such an approach is the only sensible approach, and the one which we aim to introduce here in discussing all aspects of politics" (pp. 12-13).

The twenty-seven chapters of the book are organized into five sections. Following a brief introduction devoted to "the essence of politics," the first section discusses the scope and methods of politics and the place of politics in the social sciences, and stresses the importance of folklore, symbols, attitudes, opinions, and ideologies. In section two, seven chapters are devoted to "the forms and sources of political power." The framework of organization used embraces a study of peoples, nations, states, systems of government, forms of government, leaders, followers, and the citizenry. Section three comprises seven chapters on "political techniques and procedures." Constitutions, elections, political parties, legislatures, executives, judicial systems, civil services, and bureaucracy fall within this classification. The four chapters of section four deal with "regulation and service." These two functions are accepted as the major tasks of government. The last four chapters of the book are devoted to section five on "the future of politics." In this section there is an attempt to indicate trends in local government, international affairs, political systems, and education.

If this introductory textbook is intended as one to be used as an outline for a one-semester course in colleges and universities, this reviewer believes that one of two results will follow. Either the materials will be hastily and superficially treated or the topics projected in the volume will not be covered. For "the essence of politics" as outlined in this book would embrace the fundamental parts of those courses now prevalent in college offerings which are commonly known as "Comparative Government," "Elements of Government," "Introduction to American Government," "Elementary Political Theory," and substantial parts of "World History." Only a most experienced and successful teacher could hope to present a satisfactory course covering so comprehensive an area. The task would be the more difficult because of only fairly successful integration of materials throughout the book.

A second observation seems justified. If today "the bulk of government is administration," and this reviewer believes that it is, it is to be regretted that in this volume we have another textbook in which this amazing development is comparatively neglected. For if "the bulk of government is administration," surely administration must be a substantial part of "the essence of politics."

CATHERYN SECKLER-HUDSON.

*The American University.*

*Public Administration and the United States Department of Agriculture.* BY JOHN M. GAUS AND LEON O. WOLCOTT. (Chicago: Public Administration Service. 1940. Pp. x, 534. \$4.50.)

*Administrative Decentralization.* BY DAVID B. TRUMAN. (Chicago: University of Chicago Press. 1940. Pp. xi, 211. \$2.50.)

Messrs. Gaus and Wolcott have contributed the tenth in the series of studies in administration prepared and published for the Committee on Public Administration of the Social Science Research Council. The objective of the authors has been to encourage and to provide a setting for research in administration under our federal system, based upon the assumptions that the study of administrative organization and procedure should be related to the problems of a subject-matter field and that researches in administration need to be developed as parts of comprehensive programs of regional and local appraisal. They also have undertaken to throw light on the nature of administrative departments generally by their study of this particular one. Few authors achieve their purposes so well and with so much genuine satisfaction to their readers.

In many respects, the U. S. Department of Agriculture illustrates the best in the tradition of American governmental administration: valuable service to a great section of the American people, by a highly competent career personnel recruited largely from the land-grant colleges, applying

the findings of scientific research, and utilizing the resources of all levels of government in our federal system. The story of how this great department developed from small beginnings to its present stature and complexity, the substantive activities in which it is engaged, and the resulting problems of administration which confront it are interestingly and engagingly described in this book. As the reader proceeds from chapter to chapter and from section to section, the crucial administrative problem of this great department to which the authors so frequently refer becomes crystal clear, namely, the integration of its many and varied activities and the reconciliation of the many special interests which are affected by it in order that it may truly serve the whole nation in the achievement of a balanced economy.

No adequate account of the riches which await the student of public administration who reads this book can be given within the space allotted for this review. The authors have distilled a vast amount of literature—historical, functional, biographical, and philosophical—and have added, in judicious mixture, delightful bits of personalized experience gained through numerous conferences and contacts with persons now or formerly associated with the Department. The first part, in which five chapters are devoted to the evolution of the Department, emphasizes the transition, beginning with the Houston secretaryship in 1913, from what was essentially a research and informational service to an agency concerned with the planning and direction of our agricultural economy. The authors find that “the department has generally reflected continuity in policy and function regardless of changes in party controls,” and that in the several conditioning factors which have influenced the evolution of its activities and structure the student of public administration will discover “some explanation of the nature of a department.”

Part II is devoted to an analysis of the Department's activities and of the line agencies that administer them, classified as follows: production, land use, marketing and distribution, rural life, and agricultural credit. The reader finds it easy to accept the authors' conclusion that land utilization furnishes the nucleus of the most significant group of the Department's activities, and that the need for coördination within this group of activities has given rise to some of the most interesting devices for interdepartmental, intradepartmental, and federal-state collaboration and control.

The authors' discussion of the department as a functional entity and their description of its general staff and auxiliary services constitute a high point in the study, especially for students of government, but there is no mistaking the essential unity which characterizes the entire work. The general staff concept, so often discussed in the abstract, comes to life when related to the urgent need of this huge governmental agency

for effective instrumentalities in policy formulation and in administrative direction and control. A concluding chapter on the Department in the light of current problems contains a special challenge to political scientists to make use of their immediate environments for researches which center in the community or the area, and which bring into focus and relationship the entire range of the Department's activities.

The appendices contain: (1) a monograph on *Budgetary Administration in the Department of Agriculture*, by Verne B. Lewis, which throws much new light upon the problems of budget organization, procedures, and objectives, especially at the departmental and bureau levels, and which points the way to many similar studies in other governmental agencies; and (2) documents and statistical data illustrative of the Department's activities, methods, and personnel.

David Truman's *Administrative Decentralization* is a study of certain Chicago field offices of the U. S. Department of Agriculture, including the Bureau of Animal Industry, the Agricultural Marketing Service, the Food and Drug Administration, and the Commodity Exchange Administration, and appears as Volume XII in the series of pioneering studies in public administration emanating from the University of Chicago. Beginning with a very concise and helpful discussion of the general problem of decentralization and the forms and organization which it has taken, especially among certain federal agencies, the author proceeds to examine the organization and activities of the several field offices studied, the various factors which have contributed to or retarded decentralization, and the advantages which have been secured through decentralization. The study clearly reveals the hazards of attempting to generalize with reference to headquarters-field relationships, even within the confines of a single department. Of all the forces which govern the importance of the part played by the field, the author finds that "the policies of the central offices regarding decentralized field operations are the most significant," and that, while the department has yielded to certain influences tending to force decentralization, "few positive efforts have been directed toward decentralizing, and under these circumstances inaction has made centralization the norm."

LLOYD M. SHORT.

*University of Minnesota.*

*Public Management in the New Democracy.* EDITED BY FRITZ MORSTEIN MARX. (New York: Harper and Brothers. 1940. Pp. ix, 251. \$3.00.)

This work consists of papers presented at a symposium held under the auspices of the *Harvard Guardian* Conference on the American Public



Service, a conference called and organized by a group of undergraduate students. The contributors consist largely of those who are or have been engaged in public administration, several professors, a prominent consultant in industrial management, and a student. The participants are for the most part men who enjoy an enviable reputation in their respective fields and who speak with a considerable degree of authority. The work is divided into four parts—one on the foundations of public management, one on the essentials of public management, one on recruitment for public service, and the final section on the conditions of public employment. These headings indicate the scope of the symposium and show its comprehensive character. In the nature of the case, there is a lack of organic unity and a certain amount of duplication, but these shortcomings do not seriously detract from the value of the contributions, particularly since the individual papers represent the best thinking of carefully selected people who know whereof they speak.

The key-note of the volume is struck by Max Lerner, who selected the topic, "The Burden of Government Business." He dilates on the central importance of public administration in "the crisis state." The crisis state has come to be largely because of the break-down of and the conflicts within the economic system. He points to the new techniques that are now developing in the government, such as the application of the principles of Taylorism, new types of control, planning, and research. He suggests that to meet the dangers of an emerging society a revolution of administration is to be cultivated, and is called for in order that we may safeguard ourselves against a revolution of violence. Mr. Lerner not alone sounds the key-note, but sets the challenge for the subsequent chapters.

Other contributors deal with the relations between government and the citizen, the courts, and the legislature; still others lay stress upon the need for technical advisory services and planning boards, and finally upon the relations between public servants and political parties from the point of view of political activity. Most of the papers are concerned with internal administration from the point of view of organization and management and the recruitment and training of those who are engaged in or interested in administrative positions.

In the chapter entitled "Administrative Coördination," contributed by Harry A. Hopf, one finds, in a condensed form, the important principles of organization that have been worked out in private enterprise. Mr. Hopf takes occasion to pass criticism more or less incidentally on practices encountered in federal government in relation to a number of these principles. In discussing the subject of functionalization, for example, he suggests that over-functionalization is a shortcoming frequently met with in federal organizations and suggests that this imposes a great strain on

the coördinating ability of the overhead staff. Emphasizing the necessity of a scientific balance among various elements entering into management, such as resources, men, method, machinery, materials, and money, he takes occasion to suggest that administrators selected because of political connections are not likely to meet desirable standards of competency, that specialized technical competency does not necessarily guarantee administrative competency, and that juniors selected through normal civil service procedures are not likely to be above the level of mediocrity. He comments on the lack of standardization both in machinery and material and the conflict often occurring between operating and budgetary requirements. He makes a plea for sound organization structure that should be infused with life through effective administrative coördination.

Arnold Brecht, former *Ministerialdirector* of the German Civil Service, writing on the subject, "The Relevance of Foreign Experience," draws a comprehensive comparison between the system of recruiting and training administrative personnel in foreign countries and the policies in effect in the United States. He dilates upon the conflict between the merit principle and the spoils system so often encountered in this country, pointing out that this conflict has long since been resolved abroad. Secondly, he criticises the specialized job examinations which are current with us, the lack of harmony between school and academic curricula and examinations for the public service, and the fact that it is possible to enter the administrative service at a relatively advanced age in the United States, while abroad, it is customary to enter immediately after the completion of one's schooling.

The final chapter, on "Administrative Responsibility, is contributed by Fritz Morstein Marx, who also served as editor of the volume. This chapter is a carefully reasoned and most illuminating discussion of administrative discretion. The author points out that no administrative act is valid unless it is based on statutory authorization. He then suggests that such authorization leaves considerable leeway to the administrator, who is called upon to transcribe the letter of the law into administrative orders which are in essence "creative acts." Court decisions also serve in the ordinary course of events as inadequate checks on administrative discretion, since they are largely preoccupied with the law rather than with its enforcement. Mr. Marx sums up the situation in the following statement: "Of all powers, discretionary powers are the least susceptible to extraneous controls and general canons." On the ground that rules and regulations are necessary to make law a constructive force, he makes a plea for the standardization of administrative procedure from within, as it were, and finds that interest in an internal reform is under way, a reform that should be "professional in spirit," and one having due regard for uniformity and elasticity and appreciation of the rights of individuals.

Such a movement seems to him necessary if we are to make more perfect the operations of a complex democratic society.

Taken as a whole, this work is worthy of careful reading by those who concern themselves with public administration as an evolving science and art.

WILLIAM E. MOSHER.

*Syracuse University.*

*Congressional Apportionment.* BY LAURENCE F. SCHMECKEBIER. (Washington: The Brookings Institution. 1941. Pp. x, 233. \$2.50.)

In the growing body of scientific literature about the Congress of the United States, there has been no single source for the information presented in Mr. Schmeckebier's book. The volume is a welcome addition to monograph materials, and it is much to be hoped that the data here recorded will stimulate further congressional and state activity in improving policies of apportionment and districting.

After definition of terms, the author presents detailed descriptions of the five modern methods of apportionment, all mathematically consistent: major fractions, equal proportions, harmonic mean, smallest divisors, and greatest divisors. Each discussion is accompanied by algebraic proof of the correctness of the method. Mr. Schmeckebier points out that mathematically relative difference is more significant than absolute difference (p. 60), and he therefore subscribes heartily to the widely endorsed view that the unused method of equal proportions is most nearly equitable (p. 72) and ought to supersede the currently employed method of major fractions. A valuable chapter discusses discarded methods of apportionment, many of which are subject to the so-called "Alabama paradox" by which, when the size of the House is increased, a state may even lose a member although gaining in population while another state inequitably gains though losing population. The Vinton method, used after all censuses from 1850 to 1900, is subject to a population paradox.

The author recommends a constitutional amendment providing that apportionment be based on votes cast rather than on population (p. 97). With cogency, he reveals that the portion of the Fourteenth Amendment which provides for reduction of representation in states where the franchise is abridged cannot be enforced for statistical, as well as for social and political, reasons. Yet, he would hold, steps need to be taken to remedy a situation, as in 1938, when 36.6 per cent of the population in Northern and Western states voted for representatives as contrasted with 6.8 per cent in Southern states. In any event, whether or not his proposed constitutional amendment should be adopted, Mr. Schmeckebier evidently favors a change in the Constitution to exclude aliens from the apportionment population (p. 88).

Separate chapters are devoted to a history of apportionment and to "apportionment within the states." Portions of the latter chapter are already obsolescent: the equity of districting in each state is discussed, but the volume went to press before changes were made by 1941 sessions of state legislatures. Yet the book was intended to influence legislation in the many states where districting has been inequitable. The powers of Congress in respect to districting are reviewed in some detail, and other pertinent considerations regarding prevention of unfair conditions within the states are included. If the states will not comply with the demands of equity, the author would advocate districting by Congress (pp. 143-144). There is no discussion of the merits and possible effects of proportional representation.

In a series of appendices appear useful priority lists for the five methods of apportionment, based on the census of 1930, and also priority lists for the methods of major fractions and equal proportions applicable to the 1940 census. To the general student, the tables showing total and apportionment population, together with assignment of representatives, for each census are of even greater value. The absence of an index is regrettable.

Mr. Schmeckebier has written a book of standard and permanent reference value. There are evidences that it was produced under pressure of time, yet in fairness it must be borne in mind that the volume was by design completed before important political decisions early in 1941. The combination of scholarly and political considerations is much to be commended. The suggestion (p. 150) of the need for detailed studies in each state is worthy of attention.

FRANKLIN L. BURDETTE.

*Butler University.*

*The Planning Function in Urban Government.* BY ROBERT AVERILL WALKER. (Chicago: The University of Chicago Press. 1941. Pp. xxi, 376. \$3.00.)

*Los Angeles: Preface to a Master Plan.* EDITED BY GEORGE W. ROBBINS AND L. DEMING TILTON. (Los Angeles: The Pacific Southwest Academy. Publication XIX. Pp. xvi, 303. Map and illustrations. \$3.00 cloth, \$2.00 paper.)

Dr. Walker's work is based upon his investigations and interviews in 37 cities, and his review of planning literature in the light of modern administrative theories. He presents a résumé of the development of city planning in the United States, an analysis of the planning function and of urban planning organization, and brief studies of planning programs in Chicago and certain other cities. His general conclusion is that American city planning has fallen far short of expectations. In trying to explain its

deficiencies, he develops a central thesis, somewhat as follows: 1. The creation of independent unpaid planning commissions placed the planning function at the periphery and not at the center of the city government, with resultant frustrations and antagonisms. 2. The conception of planning as primarily physical was too narrow. It led to undue emphasis on such matters as streets, zoning, and civic art, with a tendency for zoning to become predominant, while planning staffs, in turn, tended to consist of engineers and architects rather than social scientists and experts in administration. As a remedy, Dr. Walker proposes that the concept of city planning should be made as broad as the whole range of urban public functions, and that the planning function should be assigned to a research and advisory agency of broad scope attached directly to the office of the chief executive, as in the case of the national government.

While few students of public administration are likely to disagree strongly with this theory, the protests from other quarters are certain to be not long in coming. The political scientist might suggest, among other things: (a) that only the larger cities have both the ability and the willingness to support the type of planning agency proposed; (b) that not all the larger cities have the type of administrative organization, under city manager or strong mayor, that is implied in the plan; (c) that the proposed change will necessitate a reconsideration of the planning functions of local budget bureaus; (d) that a small staff can hardly be expert in all the subjects to be brought under planning control; and (e) that most of the difficulties of effective planning in a dynamic, individualistic, democratic society, where even the objectives of planning are matter for debate, will still remain. Despite these remarks, the reviewer considers Dr. Walker's book one of the most valuable and stimulating contributions to urban planning literature in many a year. It is well documented, based on sound observations, carefully reasoned, and written in readable style.

The other volume represents the commendable effort of an unofficial group of competent local experts to present the planning problems of that far-flung, helter-skelter, vital yet mushroom growth called Los Angeles. An introduction by Clarence A. Dykstra, former resident of the area, is followed by twenty individual contributions covering such subjects as geography, population, land use, water, streets, zoning, and sanitation. As the editors themselves point out, "the physical aspects of the community are given primary consideration, but other factors amenable to planning and equally worthy of study are recognized. Resources, industry, government, education, the arts might well become the subjects of companion volumes." As a matter of fact, several of the contributions do reach considerably beyond mere urban physical planning, and the concluding chapters raise important questions as to the social and economic significance of metropolitan planning in a world organized into national and international economic systems.

The authors of this volume admit what Dr. Walker asserts, that recent planning and zoning efforts have had but moderate success. Most of the problems still remain to be solved, and these essays successfully present the issues and propose interesting solutions. As such, they deserve to be read by every public planner; but the very fact that an unofficial group had to undertake this volume raises serious doubts as to the adequacy of the governmental planning machinery in the Los Angeles area. So far, it seems that Dr. Walker was right. At the same time, disturbing thoughts arise as to the capacity of any small research staff to master, not only all the topics discussed in this volume, but also all the other subjects that need to be studied, and to relate all the findings in a comprehensive plan of constantly changing content for so large and restless a community.

WILLIAM ANDERSON.

*University of Minnesota.*

*Government and the Needy; A Study of Public Assistance in New Jersey.*

By PAUL TUTT STAFFORD. (Princeton: Princeton University Press. 1941. Pp. xiv, 328. \$3.00.)

Public provision for the needy has in the past twelve years become, from the standpoint of expenditures, a major function of governments in the United States, national, state, and local. Economic conditions have forced a revolution in this field. To date, situations have been met largely by improvisation and experimentation. Few students regard the results as satisfactory, whether from the point of view of the needy, the taxpayers, or the citizens concerned with the social and economic health of the nation. The time is ripe for a review of past experience, an appraisal of it, and constructive recommendations to put public relief upon a sound, constructive basis.

In this study of public assistance in New Jersey, Paul Tutt Stafford makes a major contribution of this type. He has worked in a fertile field. New Jersey has had long experience with relief, and has made noteworthy contributions to public welfare administration. Its department of institutions and agencies has for years been in the fore among state departments of public welfare. Coöperation between the members of that department and Professor Stafford and his associates at Princeton and others concerned with relief in New Jersey has been so close that the present book comes to grips with the real problems. New Jersey, too, is an industrial state that has felt the full force of the depression, and it also presents some interesting features in its residential suburbs, its shore resorts, and its rural counties.

Part I of the book deals with "The Historical Development of Legislative Policy and Administrative Practice," beginning with Chapter 2 on "The Formative Period, 1609-1800," and ending with Chapter 5, "Public

Poor Relief in Transition, 1930-1940." Chapter 3, on "The Development of Almshouse Care in the Nineteenth Century," merits special mention because it presents the results of an original study of early town and county official records.

Part II deals with "The Present System in Operation." It has five excellent chapters, combining description and evaluation: "The Scope of Public Assistance," "General Relief," "Categorical Relief," "The Federal Work Relief in New Jersey," and "The Local Agencies in Action."

Part III is "A Program for the Future." It points out two major weaknesses: (1) the excessive and illogical division of relief responsibility among the three levels of government, and (2) the lack of administrative and financial stability. "The philosophy of impermanence has prevailed in legislative halls, controlled the policy-making process, and permeated the administrative structure. Improvisation and constant change have been, and are now, the keynotes of public action."

The first recommendation is for the reallocation of functions in accordance with the following plan: "(1) The federal government should be responsible for administrative supervision over the various state programs and for the maintenance of certain minimum nation-wide standards of administration. (2) The state government should be immediately responsible for the enforcement of federal administrative standards and regulations within the state and for general supervision over the local administrative units. (3) The local governments should be responsible for direct administration of the public assistance services in accordance with federal and state regulations. (4) Financial responsibility should be shared by all three governments through a system of federal and state grants-in-aid. Federal grants should be distributed among the states on the basis of their respective needs and resources. The states, in turn, should provide subsidies for the local subdivisions on the basis of their respective needs and resources. The states would be responsible for the distribution of these federal and state funds to the localities. The balance of the cost would be assumed by the local governments themselves."

The second recommendation is for an integrated state program of public assistance, with the county as the unit of administration in the rural areas and in areas with only small towns and villages.

LEWIS MERIAM.

*The Brookings Institution.*

*Police Systems in the United States.* BY BRUCE SMITH. (New York: Harper and Brothers. 1940. Pp. xx, 384. \$4.00.)

Bruce Smith has compressed into a single volume an extensive knowledge and astute insight acquired during a quarter-century of intimate contact with police administration. Aspects of organization and adminis-

tration, devices for popular controls, and the general historical development of police administration on the federal, state, county, and local levels receive adequate treatment.

A wide variety of data are given regarding the incidence of crime, the prevalence of various types of offenses in urban and rural areas, the relation of race, nativity, and sex to the commission of various crimes, and the general trend in the annual volume of criminal acts by types. And the history and importance of uniform crime reporting are stressed, along with an indication of the trend toward centralized services. Considered in the latter category are: clearing houses for identification records; central laboratory services; and intrastate, interstate, and inter-jurisdictional metropolitan communication systems. Emphasis is placed upon the difficulty of maintaining centralized services in the presence of generally dissimilar local organizations and highly decentralized administrative authority.

The historical evolution of popular controls of police departments is carefully traced. A need is indicated for modification of restrictions to afford police heads genuine authority and to assess responsibility which cannot be shifted. Less turnover of chiefs is one direct answer to this problem. The inadequacy of present recruitment methods, because of residence and veteran preference rules, and limitation of promotional opportunities, because of seniority requirements, are set forth. Federal, state, and municipal police agencies which have no formal merit system and yet are outstanding examples of efficient administration are quoted. It is clearly shown how civil service regulations often operate to restrict disciplinary authority of police chiefs, thus reducing the effectiveness of even the best qualified leaders.

The importance of in-service training programs in recent years is pointed out, and the need for wider application of these efforts is outlined. Further development of college and university curricula to train potential police administrators also is urged. Particularly timely is the discussion of civil defense and emergencies and the mobilization of police resources in times of need.

Probably nowhere else in police literature is there a more sympathetic, yet a more critical, statement of the many forces which exert pressure to the detriment of police work in a democratic system. The importance of social, economic, governmental, and moral factors is recognized. The problem of distinguishing between many regulatory police functions and the more obvious function of repression and investigation of crime is well handled. Mr. Smith emphasizes the danger inherent in creating new police agencies to enforce each new law or to perform work of an extremely fragmentary nature.

The book is not written in the traditional text style. Mr. Smith evades



no issues; he gives personal opinions unequivocally. Wherever controversial issues are raised, the pros and cons are fully discussed. There is ample documentation and supporting evidence. Generous use is made of charts, tables, and graphs.

There exists no more complete treatment of this vital subject. Students of political science, and especially those interested in police administration, will find the book an indispensable reference.

FRANK M. STEWART.

*University of California at  
Los Angeles.*

*His Majesty's Opposition; Structure and Problems of the British Labour Party, 1931-1938.* BY DEAN E. MCHENRY. (Berkeley: University of California Press. 1940. Pp. xii, 320. \$2.00.)

This book is not a treatise on parliamentary opposition in general, nor even a complete history of the Labour party within the period indicated, although it does contain a considerable amount of information about the party from the "Lib.-Lab." days down to the end of 1937. As Professor McHenry states in his preface, he is mainly interested in party structure. Accordingly, he concentrates upon machinery and intra-party relations, and gives only passing mention to considerations of high policy, parliamentary strategy, and the like. Appropriately, the treatment is topical rather than chronological.

This work was first published in England in 1938, as *The Labour Party in Transition, 1931-1938*. Inevitably, therefore, some of the information it contains is "dated," although this fact does not seriously impair its usefulness. One cannot help regretting, however, that a chapter on the very interesting recent developments could not have been included. The author has concentrated his attention upon the curious and complicated federal structure of the Labour party, which is in reality a congeries of semi-autonomous "parties" organized upon such diverse bases as occupation, special interests, and locality. The divergence of views implicit in such a structure is reflected in controversies over the control of party policy. Generally speaking, the local constituency parties tend to attract intellectual and middle class members and accept more radical leadership than do the trades unions. So far, the latter have been able to dominate the party Conference, but Professor McHenry foresees the future of the party as bound up with the eventual absorption of the unions into the constituencies and the simplified party organization upon a purely local basis. This, he thinks, would correspond better with the electoral system, and give the party a more complete unity than it has yet achieved, as well as making it a more truly "national" party. So far, the unions have blocked such a move, just as they have tended to retain too many seats in the

Commons for superannuated union politicians. The trades union basis of the party enabled it early in its history to assume a size and importance it could not otherwise have hoped for, but subsequently, the author believes, the semi-oligarchic control of union leaders (p. 34) has had a deadening effect upon policies and personnel.

The importance of the Coöperative party as an element in Labour party strength may be news to some American readers. This party, numbering over 5,000,000 in 1937, elected nine members to Parliament in that year, in alliance with the local labor organizations. It remains autonomous, however, as regards policies and finances.

The author frequently touches upon interesting topics, only to abandon them with a passing word. For example, he refers to the inherent danger to party unity and discipline in the fact that a Labour M.P. may owe his seat to an extra-party organization which has helped to finance his campaign. A trades union member especially cannot afford to offend his union, which controls his livelihood in or out of Parliament. Have conflicts between party and union policy actually occurred, and how often?

The chapter on parliamentary leadership is interesting but scanty, and in some cases the author's views might possibly be modified by recent events. Indeed, the whole book could well be expanded into a more important work. One wishes that the general statements were more often illustrated by reference to actual events, and that more use had been made of the dramatic possibilities inherent in the story of a great political party. Perhaps this criticism is unfair in that it amounts to a wish that the author had written a history of the party—something he did not attempt. If the book is disappointing, this may be due to the fact that structure alone is insignificant without an accompanying full consideration of party aims, policies, and methods, as well as the party's relationship to general political life and to other parties.

MORLEY AYEARTS.

*New York University.*

*War and Peace in Soviet Diplomacy.* BY T. A. TARACOUZIO. (New York: The Macmillan Company. 1940. Pp. 354. \$4.00.)

In the present complex international scene, no single element is more obscure and absorbing than the policies and intentions of the Soviet Union. Hidden from the world by an amazingly total censorship, Russia has played its own game in the world's current wars in such fashion as to reduce interpretation or prophecy to a matter of sheer guesswork. If there are many who claim to know the answers with certainty, they differ so fundamentally among themselves that it seems wholly justifiable for the bewildered observer to conclude that they have been guided primarily

either by wishful thinking or by an arbitrary selection of certain phases and aspects of the Soviet's activities and pronouncements.

The appearance of a serious full-length attempt to work out a definitive answer to this problem is obviously a matter for congratulation, and Mr. Taracouzio has brought together a number of materials which it is highly useful to have available. But it is to be doubted that he has succeeded in laying bare the basic motivations which have led the Soviet Union into its present equivocal position: there remain a variety of alternative explanations, and the thesis which the author advances appears to lack the inevitability with which he is inclined to invest it.

On the score of wishful thinking, it is a reasonable conclusion on the basis of the evidence presented and omitted that Mr. Taracouzio sets out with a basic hostility both to the Marxist ideology and to the Russian practice which leads him to ignore too cavalierly points brought forward by the Soviet Union's defenders. To cite a single example: in the discussion of the events of Munich there is no mention whatsoever of the fact that Russia was excluded from the four-power conference which abandoned the Czechs to their fate, nor is there any discussion of Stalin's asserted readiness to come to the aid of the Czechs if France lived up to her commitments. But it is pointed out that when the German troops marched into Prague on March 15, 1939, "Moscow's reaction was to do nothing." The failure of the Soviet Union to join the Allies in the war with Germany is termed a betrayal (although clearly from the Soviet standpoint, as stated by the author, it was no betrayal but rather a sticking to fundamental principles); but there is no examination of the thesis that Britain and France were engaged in double dealings which were substantially a betrayal of Russia.

It is the basic thesis of the author that the Soviet Union is guided exclusively, or virtually exclusively, by the dogmas of the Marxist-Leninist creed which look to the world spread of communism and regard war and peace merely as alternative means by which this goal can be achieved. From this starting point he comes to the flat conclusion that the present European war was wanted by the Third International and by the Soviet Union, that it has been "a useful thing" and a "pleasure" to them, and that they deliberately encouraged its outbreak. It should be noted that these assertions are apparently made on purely theoretical grounds without the production of any documentary evidence to support them, although in all other passages the author errs, if anything, on the side of an over-use of footnotes and direct citation. (This reviewer must, however, speak with caution on this topic inasmuch as sixteen vital pages (pp. 261-276) were omitted in the make-up of his copy of the book.)

A fundamental criticism of the approach of Mr. Taracouzio is that it is based almost entirely on Marxist-Leninist theorizing, with practically no

attention to the needs and demands of the U.S.S.R. as a state among states, as a political entity located in concrete geographical space. It ignores the possibility that the actual determinants of Russian policy at the present day may be in large measure of substantially the same order as those which shape the policy of other states: the concrete political-economic advantages of certain lines of action and the strength or weakness of the political, economic, and military instruments which must be used to execute alternative policies.

RUPERT EMERSON.

*Washington, D. C.*

*Workers Before and After Lenin.* BY MANYA GORDON (New York: E. P. Dutton and Company. 1941. Pp. 514. \$4.00.)

Manya Gordon's book is one of the outstanding contributions to the voluminous literature on the Soviet Union. For years, honest investigators, in their attempt to evaluate the great social experiment in Russia, have given the Bolshevik régime the benefit of the doubt and credited it with improvement of the social and economic conditions of the masses as they existed in Tsarist Russia. Now comes this study from a liberal, long a student of Russia, who has spent ten years in the endeavor to find out exactly what the Bolsheviks have accomplished in nearly a quarter of a century of rule. With her devastating pen, the author sweeps away all the pretensions of the Soviet authorities and shows how the suffering of the Russian people has brought them nothing in terms of goods and happiness. Using largely Soviet sources of information, Manya Gordon tells a story of failure and of a consistent deterioration of standards of living, the subjugation of the peasant and worker to a tyranny which in comparison makes the Tsarist suppression seem mild. The small gains which the Russian worker made beginning with the 1890's up to 1917 have been obliterated by ever-increasing pressure of government tyranny. Thus strikes have been outlawed and labor has been placed under the absolute control of the state. The fixing of wages was taken out of the hands of the workers' organizations and transferred to the directors and administrative officials of the industries; and on January 1, 1939, "labor books" were introduced, without which no worker can be employed.

In terms of real wages, the Russian worker, according to the writer, is worse off than before the first World War. Thus the present wage of the average worker can buy only three-fourths of the food value that the pre-Bolshevik wage-earner could buy, whose earnings were low in comparison with Western European standards. The book points out that with the shortage of consumer goods and the low grade of material produced, the worker in the Soviet Union is in some instances not as well off as in former days. The increase in money wages has been nullified by the tremendous

rise in prices of staple foodstuffs and goods. "The second Five Year Plan, ending in 1937, instead of making Russia the 'most advanced nation in the world,' left her distressingly ragged" (p. 245), and one might add, wretchedly hungry.

Manya Gordon's book is not pleasant reading; for whatever illusions one may have had about the betterment of the bitter lot of Russia's millions by the overthrow of Tsarism and the introduction of the new economy have been hopelessly dissipated before one has gone very far in reading the volume. On the title page, the author quotes Lenin, who in 1905 said: "Without political freedom, all forms of workers' representation will continue to be a fraud. The proletariat will remain as heretofore in prison." The Bolsheviks will do well to ponder this statement. The author completes the book on an optimistic note, hoping that the many arrests and executions indicate a strong opposition to the despotic régime of Stalin. She has faith in the Russian people, who, unlike "the cultured, docile Germans" are "fighting Slavs who are the hope of democracy in Europe. No one has paid more dearly for the ideal of liberty than the Russian people. Its victory will be the death-knell of despotism the world over!"

BERTRAM W. MAXWELL.

*Washburn College.*

*The Political Economy of War.* BY A. C. PIGOU. (New York: The Macmillan Company. 1941. Pp. viii, 169. \$1.50.)

*The Economics of Force.* BY FRANK MUNK. (New York: George W. Stewart. 1940. Pp. 254. \$2.00.)

The first World War brought forth a large crop of books on war economics and on war finance; understandably so, since the usual aims of economic activity were profoundly upset, the usual methods of liberal economic life were altered by emergency state actions, and new problems arose with respect to production and distribution, as well as with respect to private and public finance. The challenge of a cataclysmic war was met, and during the war, and particularly after it was over, economists proceeded to make a study of these new and perplexing problems. Among the books written at that time in England was a little volume published in 1921 by Professor A. C. Pigou of Cambridge. Small in size and deep in analysis, this volume had another valuable service to render less than twenty years after it was first published. The present new edition, written in the fall of 1939 and now made available in this country, will once again prove an invaluable help to the study of war economics. It was written primarily for economists, but will be readily understood by the trained college graduate. It should be very useful to the political scientist.

The subject-matter of the book covers the war-time problems that have to be faced by the economic life of a democracy. It does not extend to the

problems of a totalitarian war economy. Within its limits, the book provides a very careful survey of resources (both real and financial) and their war-time distribution; of fiscal policies with respect to both taxation and borrowing; of price controls made necessary by the exigencies of war; of rationing, particularly as regards consumers goods. There are chapters on monetary policy, on the regulation of imports, on priorities, etc. Problems that arise out of the need for more advanced types of planning in order to direct an ever larger amount of resources towards military needs are not discussed. They are rather particular to this present war, and their emergence in England post-dates by about a year the writing of this book. Apart from that, the totalitarian techniques, some of which democracies had to borrow from their opponents under the pressure of events, are primarily matters of administration and of industrial organization; and all such matters Professor Pigou leaves explicitly outside the scope of his study. The book thus covers only a part of the problems which have to be faced in pursuit of the modern war, but that part is dealt with in a masterly way.

Dr. Munk's book is concerned with the totalitarian phase of war economics and with the economic policies of the totalitarian state in general. As the author says in his preface, the book was written very hurriedly and is intended for the non-technical reader. That reader will find in it a discussion of various aspects of the totalitarian state and of its economic planning, as well as much information regarding the problems of the totalitarian war. The title is very catching, but does not convey any very clear idea, and the text fails to provide a clear-cut definition of the notion of "Economics of Force." To contrast it with "Economics of Welfare," as the author does, is not sufficient, since this is also applicable to the usual term of "Economics of War." Chapter 7, which attempts to provide an answer to this question, leaves the reader pretty confused. The sections dealing with the structure of the totalitarian economy and with the use of force instead of the market mechanism of the liberal economy are the best in the book. It is a pity that the purely economic analysis is not pushed a little more deeply. Many excellent formulations are to be found throughout the book, but there are also many generalizations and statements which to this reviewer appear highly debatable. For example: "The crisis through which the world is passing today has been called a war. Much more appropriately it should be called a revolution . . ." (p. 15); "Communism stands half-way between Democracy and Nazism" (p. 38); "Even if totalitarian methods are used in foreign trade, internal business relations should be continued on a democratic basis" (p. 189); etc. The last statement quoted seems to assume that such a combination is possible—an assumption which is very dubious. Dr. Munk's strong stand against the reign of force and his defense of liberal

institutions are well stated and more than welcome. The book would be more satisfactory and more useful if the material that it contains were better organized and supplemented with additional data, if the economic and political arguments were more closely reasoned, and if some of the easy, slogan-like phrases were dropped. But even as it stands it is a readable and interesting volume.

MICHAEL A. HEILPERIN.

*Bryn Mawr College.*

*They Wanted War.* BY OTTO D. TOLISCHUS. (New York: Reynal and Hitchcock. 1940. Pp. viii, 340. \$3.00.)

The 1940 winner of the Pulitzer prize for foreign reporting was a *New York Times* correspondent in Berlin from the time of Hitler's advent to power until the early summer of 1940, when he shared the fate of other good journalists stationed in Germany by being expelled from the country. Drawing freely on his dispatches and articles during these years, he now ties them together into a panoramic view of recent current history. Through his searching eyes we see the enormous and far-reaching efforts contained in Nazi Germany's preparations for total war, her smashing blows against Poland, and the establishment of the "new order" in Eastern Europe. There are chapters on Nazi economics, fifth column organization methods (Tolischus is well remembered for his early and well-documented exposé of the organization and working of Nazi organizations in non-German countries), Nazi psychology, war aims, and civilian morale. The impact of the war on the average German, the awakening to the fact that the boys would not be home by Christmas (1939), the intensified regimentation, the rapid drop in standards of living, and the great leveling process initiated in the name of "German socialism" are vividly portrayed; as are the clock-like precision of the German army, its all-around efficiency, its brains, its mechanized strength which smashes a foreign army with well-aimed, hard-hitting blows only to withdraw again and again when it comes to differences with the Nazi administration, especially the forces of the SS.

The book is journalism of high merit—a fine blending of investigating ability and reader appeal. Some of the appended dispatches on the fate of Poland which are reproduced in their unabridged, original form are journalistic classics that have not lost their breath-taking vividness with the passing of time. The importance of the book, however, goes beyond its values as a piece of excellent reporting; it is a story of Nazism in action on the international scene which is authentic in fact without being buried alive in academic aloofness; it is gripping but not heated; it compels reflection on the urgent implications for America rather than emotional confusion. It is strongly recommended to students of current affairs, who

will find valuable and extended excerpts of source materials interspersed with the text, and a good index for quick reference.

JOHN BROWN MASON.

*Fresno State College.*

*The Reconstruction of World Trade.* BY J. B. CONDLIFFE. (New York: W. W. Norton and Company. 1940. Pp. 427. \$3.75.)

Despite the tacit promise of its title, this book offers neither a blueprint nor a prophecy for the post-war world. A scientist rather than an architect or a soothsayer, Professor Condliffe presents a careful survey of the processes by which the traditional pattern of world trade has disintegrated and new forms have arisen, analyzes the major contributing factors, and assesses some of the conditions and pressures with which future economic statecraft will have to reckon. In so doing, he has provided a document which, because of its close adherence to political and economic realities, and its sane, judicious temper, represents a more fruitful addition to the growing bookshelf on the shape of the world to come than many of its more stylish contemporaries. If it were less ponderous in composition, more incisive in narrative and argument, the book would achieve the wider circulation its material deserves. It is a pity that good political economy must sometimes be dull political economy.

The analysis of the development and character of national governmental restrictions which obstruct, and in some respects destroy, the traditional capitalistic, multilateral, non-discriminatory basis of world trade is searching and full of suggestion. In exploring the causes of the phenomena, Professor Condliffe cites the familiar facts of profit-drives, inflamed nationalism, and latterly, the quest for military potentials, and the use of trade as a political instrument. But, in addition, he points out a factor which though patent is frequently ignored—the progressive decline of *laissez faire* on the domestic level passing over into the international sphere. As state regulation and control has naturally followed upon the failure of a privately operated economy to meet social requirements, so, he declares, there is “no possibility of restoring a world-wide system of expanding trade based on free enterprise” (p. 149).

The problem, then, is not one of control vs. absence of control; it is, rather, what *kind* of control should be exercised if a world trading system is to be restored? Professor Condliffe sees little hope for the effective integration of economies which are state *operated*; but if state activity is confined to the regulatory function, “such integration is not inconceivable, but will demand the invention of new types of international political and economic institutions” (p. 353).

What form these institutions might take would depend partly on the military outcome of the war. A German victory would undoubtedly ac-



celerate the trend toward regional blocs, but no matter how the war ends, he argues, the development of great economic regions in which a group of satellites, more or less politically autonomous, surround a metropolitan center is quite possible. If democracy triumphs, this may be accompanied by federating movements. This politico-economic integration solely within geographical segments would be avoidable only as a result, he insists, of the effective intervention of the United States on behalf of a genuinely international system. Without the assumption by the United States of a responsibility for world economic leadership, the development of regionalism (which the author views with misgivings) may be the only course available.

The careful interweaving of economic and political factors which distinguishes so much of the treatment in the book is less conspicuous in the final chapters which sketch the possible outlines of future developments. For while, on the one hand, Professor Condliffe sees the desirability of a broadened international authority (perhaps that of a reconstituted League) to exercise control over cartels and to supervise technical organs of international economic coöperation, he leans toward the recommendations of the Bruce Report to separate the economic functions from the political. This line of reasoning, it is submitted, all too frequently leads to dangerous pit-falls. Peace is not regional; it is indivisible. If political peace and security are not preserved on a world scale, there would seem to be little chance for the growth of durable international economic collaboration. Doubtless the author would agree with this assertion; but he lamentably fails to develop the possible lines of political, to accompany the economic, reconstruction.

WILLIAM P. MADDOX.

*University of Pennsylvania.*

*Barriers to World Trade; A Study of Recent Commercial Policy.* BY MARGARET S. GORDON. (New York: The Macmillan Company. 1941. Pp. vii, 530. \$4.00.)

A few years ago, the tariff issue was merely one knotty plank in each major party's platform. Such platforms were looked upon as both wobbly and temporary in character. The treatment of foreigners' exports to the United States was not regarded as having anything to do with a multitude of supposedly more important internal affairs. Lately, we have heard less of tariffs in general, more of import quotas, exchange controls, bilateral bargaining, and barter in international trade—and the relation of these to a host of internal problems. *Barriers to World Trade* gives the reader a comprehensive picture of the shifts from tariffs to exchange manipulation and quota systems for imports. It does not attack these "evils" with a barrage of sarcasm and name-calling reminiscent of our traditional free

traders. It considers the situation in each country which has given rise to the use of the current techniques, and then examines the total result in its effects upon foreign trade, the policies of neighboring countries, and the consequent internal backfire and repercussions. Before he has finished, the reader is aware of the manner in which foreign trade policies cut across almost every important phase of domestic affairs.

This study of recent commercial policy considers the abnormal measures necessitated by the war; the breakdown of the gold standard; and the control of international payments—particularly the spread of exchange control from 1931 on. Next dealt with is the control of the international movement of goods through the new tariff policies after 1931, the increased use of import quotas and other forms of import restriction, and export promotion and control. The final section deals with commercial bargaining: bilateral agreements in general; the bargaining policies of four leading countries (the United States, the United Kingdom, France, and Germany); and regional and multilateral negotiations. Thus the author gives an excellent perspective to a subject which previously has been presented piecemeal in a multitude of monographs.

We can agree with Mrs. Gordon that the regulation of prices, wages, working conditions, rents, and other elements in the domestic economic structure tends to interfere with the competitive position of a nation's industries in international trade. This leads to a demand for protection or subsidization from producers who find their competitive power weakened. Such trends toward regulation by introducing rigidities into the price structure make it more difficult for a nation to adhere to an international monetary system. "The greater the emphasis on internal price stability, whether for individual industries or for the nation as a whole, the greater the likelihood that governmental intervention in international trade will take the form of quantitative restrictions rather than tariffs. But the introduction of quantitative trade restrictions is likely to lead, as we have seen, to internal price-fixing and rationing which, in turn, gives rise to other controls" (p. 483). All of which reminds one of the ancient query as to which came first, the hen or the egg. Was it tariff policies that led to monopolies and trade association price-fixing internally? Or was it internal price-fixing that first led to the demand for protective control of imports? Perhaps it does not matter, now that both the hen and the egg are with us. But all students of government will be interested in knowing how inextricably our internal and external trade policies are involved.

That the progress of technology has greatly increased the potential advantages to be derived from world economic integration has been ably argued by Eugene Staley in *World Economy in Transition*. That the pressure of powerful political forces is making for general disintegration of the established channels of trade is more apparent to all of us. Granting that

world economic integration is desirable for the maximum benefits of technological progress, is it conceivable in the absence of an effective international political organization? This seems to be the question of the hour. As to just where we shall go from here, the author seems less optimistic than the proponents of "union now."

Mrs. Gordon's selected bibliography is the best I have seen in this field.

JOHN DAY LARKIN.

*Illinois Institute of Technology.*

*Union Now With Britain.* BY CLARENCE K. STREIT. (New York: Harper and Brothers. 1941. Pp. xv, 234. \$1.75.)

Mr. Streit's 1941 proposal is not a mere truncation of his pre-war plan for federal union of fifteen democracies. Whereas the 1939 project was aimed to *prevent* war, the union of the United States with Britain and her Dominions (including Eire) is presented as the only means of *winning* the war. The author agrees with Roosevelt and Churchill that an American Expeditionary Force is not needed, although the Navy and Air Force are. The German people, after the onward march of Nazi troops has been halted, will unhorse Adolf Hitler (as they did Wilhelm II) in order to stop the war and gain the advantages of union: full political and economic freedom plus equal opportunity in the Union's colonial territories. Membership would be open to "peoples who have long governed themselves democratically, or who prove their readiness . . . by the way in which they restore at home their own free rights." Also, "the day Germany is admitted to the Union, the problem of world disarmament is practically solved." Hence, Union is the way to win the peace, too.

The union project, sustained by Streit's copious excerpts from Lincoln and the Founding Fathers, makes strong appeal to the heart of the political scientist, and has made some headway with the man in the street. But to secure Union Now (within a year), the author employs nationalistic appeals hostile to the union idea. Sustained stress is placed upon the proposition that America would have twenty-seven votes out of forty-nine in the unicameral Congress of the Provisional Union, whereas under an alliance with the British Commonwealth we should have only one out of seven.

Of course Union Now means War Now, but Streit regards it as almost inevitable that we will fight anyhow; for our democracy is threatened with invasion. If we do go to war, Union might become politically feasible; and its extension to enemy states would then become a cardinal peace aim. In the annexes, the author adds a suggested Declaration of Inter-dependence and Union, a constitution for the Provisional Union, and a constitution for the definitive Union—effective after popular referendum in each Member Democracy.

Despite the moralizing tone which pervades every paragraph, political scientists will appreciate this journalist's dramatization of Union in concrete terms. They may also be piqued by his somewhat novel discussion of Union as an antidote to over-centralization, and of Union's constitutionality.

H. SCHUYLER FOSTER, JR.

*Ohio State University.*

*Night Over Europe; The Diplomacy of Nemesis, 1939-1940.* BY FREDERICK L. SCHUMAN. (New York: Alfred A. Knopf. 1941. Pp. xv, 600. \$3.50.)

In his preface, Professor Schuman tells us that this volume concludes a trilogy which, taken together, "purport to tell how and why democracy committed suicide and delivered Europe and the world over to the mercies of the Fascist Caesars." This pessimism runs like a thread throughout the book. He speaks of the Western democracies as "decadent societies . . . rich in villainies" (p. 188); of "those who still envisage the course of human events in terms of Causality rather than in terms of Destiny" (p. 195); "Poland's agony foreshadowed the death of the world . . ." (p. 376); "The war in the West was lost long before it began" (p. 444).

Mr. Schuman is, in fact, punch drunk. He walks down the street waving his arms and expostulating as to what a bad world it is. What he says is largely correct, and he is justified in saying it, but misfortunes have got him down; he has been shocked into desperate words. Probably it will do some good to say them in this fashion. Perhaps by now he has a little more hope; perhaps he may yet survive to write a book entitled "Dawn over Europe." He himself spys some slight gleams of light. By p. 591, inescapable doom has been diminished to a "not improbable final victory over the West"; by p. 594, he has found an answer, and it is the correct answer: "The prime prerequisite is recognition that the world society is one, and that it must be reconquered from the barbarians and reordered as a single polity in which justice for each is protected by the organized might of all. . . . The Fascist vision of a united and ordered world can be overcome only by a better vision of a united and ordered world put forward by the democracies and fought for with comparable foresight and valor." He asks for an Anglo-American federation, with Russia as an ally, and others to enter as they will. He even thinks this is a possibility, though a bare one—bravo! *Nil desperandum* is a better motto than Destiny.

In the past record of the democracies there is ample ground for pessimism, but one democracy is now redeeming itself, and even the wishful United States is rousing itself. The irresponsibility and tergiversations of the democracies deserve excoriation. "They were undone by fear of losing elections if they warned the masses of dangers which the masses preferred not to face" (p. 20). And the American democracy cannot escape its share

of the blame: "In the United States as elsewhere, the physiology of decadence manifested itself in the widespread view that risks could be avoided by shunning responsibilities, and that escape from duty was the best road to escape from danger." The author is not writing in terms of political theory, but he contributes to it by advising the disciples of democracy that "they must overcome the flabbiness which permits leaders to evade the duties of leadership or obliges them to engage in dubious battle with self-seeking lobbies, pressure groups, and stubborn minorities in legislative assemblies. They must support government that governs. They must relegate to the dead past the belief that liberty can be safeguarded by limiting to narrow scope the powers of government or by maintaining checks-and-balances which spell paralysis. . . . They must fight 'despotism' by the means used in all ancient democracies, by the only means which will serve—i.e., by 'dictatorship' to meet crises, by one-man rule if need be so long as danger threatens, and it will threaten until the world is reborn" (pp. 596-7).

The picture of the events leading up to the war and through the collapse of France is painted in full detail; what parts of it will fade out, and what parts will be painted in later cannot now be foretold. It is much to be doubted that the documentation, even within limits, is complete (p. vi), but Mr. Schuman has done a thorough job of covering the information at hand. His conjectures and conclusions may or may not satisfy, but he is sound in so many instances that he is entitled to consideration in all others. The argument concerning class attitudes and powers cannot be contemptuously dismissed; it may be the explanation of a world revolution. The demand for coöperation with Russia cannot be dismissed simply because one does not like communism; we have to live in the world with many things we dislike. The criticisms of democracy are vital and should be taken to heart. And it is impossible to dismiss as idealistic or unrealistic the contention that the only way out of current anarchy is an organized community of nations—which cannot be successful unless the United States is in it. War, and even victory, is insufficient in these days; more is required.

CLYDE EAGLETON.

*New York University.*

## BRIEFER NOTICES

### AMERICAN GOVERNMENT AND POLITICS

E. F. Bartelt's *Accounting Procedures of the United States Government* (Public Administration Service, pp. xii, 155, \$4.50) consists of a series of papers originally presented to various groups throughout the United States. The treatise is essentially an historical and descriptive discussion

of the activities of the United States Treasury Department and of the accounting methods used by the United States Government. Although there is some duplication in the background material, the successive chapters develop distinct topics and present separate phases of the government's business or accounting procedures. Subjects dealt with include Treasury functions, the application of mechanical aids in the accounting system, central accounting procedures, administrative accounting for emergency relief expenditures, control of federal expenditures, a plan for integrating the various accounting systems, and fiscal and accounting relationships among governmental agencies. The author views the problem of improving the government's accounting system as one phase of the larger problem of administrative management. He suggests, therefore, that the country be divided into twelve or more fiscal districts, in each of which there would be service agencies responsible for the following functions: personnel, procurement, collection, disbursement, accounting, and auditing. The agency responsible for auditing would be independent of the executive branch and would be under the direction of the Congress. All the other agencies would constitute a part of the executive organization. The district or branch accounting agencies would exercise general supervision over the account-keeping functions of all federal activities in the district, maintain summary controlling accounts relating to the financial operation of all federal activities within the district, and render periodic financial reports to Washington for consolidation in a composite financial report for the government as a whole. Mr. Bartelt recognizes the need for integrating our federal accounting system, and his proposals to this end seem both practical and wise. His clear presentation of a highly intricate subject prompts the reviewer to express the hope that the author will explore the subject of federal financial administration more fully in future publications.—MARTIN L. FAUST.

*Farmers in a Changing World; Yearbook of Agriculture, 1940* (Washington: Government Printing Office, pp. xii, 1215, \$1.50) is the fifth in a series of the yearbooks presenting a record of exploration in agriculture as related to humankind. Though the yearbooks since the inception of the present type of reporting in 1894 have been designed to be of interest chiefly to the farmer, this one, more than any other, views the farmer as a citizen concerned with his occupation as a part of the nation's future. The average citizen may sincerely hope that "explorations along the social and economic frontiers of agriculture" may be of no less interest to the farmer because of this fact. Instead, it is believed that the farmer's appreciation of the synchronization of his occupational interests with those of others may invite and hold his interest as well, so that our agricultural policy may keep step with the new needs arising from the profound disturb-

ances throughout the world and that there may be a sharpened recognition of interrelationships. This yearbook disclaims any attempt to represent official policy, but invites differences in viewpoints upon the social and economic implications in agriculture. The work consists of three general sections. An excellent one-hundred-page summary is followed by fifty-four articles organized in seven parts dealing with: "The Farmers in a Changing World"; "Agriculture and the National Welfare"; "The Farmer's Problems Today and the Efforts to Solve Them"; "Farm Organizations"; "What Some Social Scientists Have to Say"; "Democracy and Agricultural Policy," and is concluded with an appendix presenting a brief "Chronology of American Agricultural History." In the first section, a history of American agriculture provides background for the topics that follow. Maps, charts, footnotes, and a few well chosen bibliographies should prove helpful. Though Henry W. Spiegel's *Land Tenure Policies at Home and Abroad* (University of North Carolina Press, pp. xii, 171, \$3.00) bears a comprehensive title, it is restricted practically to analysis of tenure policies in the United States, England, and Germany, with only brief or incidental reference to France and other Continental states. It is not claimed that the analysis of land tenure policies is conclusive, and this is particularly noticeable in their consideration in the forty-eight states. A careful, detailed analysis of the total impact of state tax laws upon land tenure would be welcome. A more detailed analysis is made of the English and German policies. Numerous tables, generous footnote references, and a well chosen bibliography should prove helpful to the student of the question. The consideration of the effects of institutional and economic factors upon public policies will interest the student of politics.—H. C. Cook.

Through the resources of the Tennessee Valley Authority, Dr. M. H. Satterfield and others have completed a valuable study, based upon governmental documents and field investigations, entitled *County Government and Administration in the Tennessee Valley States* (Tennessee Valley Authority, pp. ix, 144, on request). This study outlines the organization and functions of counties, examines their suitability as agencies of administration, and describes the more important trends in county government in this region. For example, it takes note of such tendencies as the cessation in the creation of new counties, the concentration of administrative authority in some county court, commission, or official, the extension of county liability, and the creation of additional special districts where proprietary functions are assumed. The study emphasizes the fiscal inadequacy of the county as a unit of government and notes the attempts to seek state and federal aid. Moreover, it points out the sporadic character of systems of real state administrative control. Prophecy as to the future

goes no farther than a prediction of what may be expected if present trends continue, namely, that there will be increased functional consolidation and a reallocation of functions, with state assumption of those which cannot be performed economically by the counties. The study discusses separately the administrative practices for each service in each of the states, making the treatment somewhat repetitious, yet this plan presents a good comparative picture and numerous examples of problems peculiar to rural local government. A somewhat fuller discussion of such newer activities as planning, housing, and electric power distribution would have been welcome, and perhaps less objectivity would have given a more realistic appraisal. Nevertheless the study is a definite contribution to the field of rural local government. It is enhanced by eighteen valuable tables, a selected bibliography, and a suitable index.—WILLIAM H. COMBS.

Drawing upon his studies for a biography of Mr. Justice Brandeis, Alpheus T. Mason has incorporated a segment of them in *Bureaucracy Convicts Itself* (Viking Press, pp. 224, \$2.50). The product is a volume which is more than a fragment struck off from a larger endeavor. It is, in itself, a recreation of what, as Mr. Mason observes, might have become an American Dreyfus affair, the Ballinger-Pinchot controversy of 1910. In the main, a piece of straightforward historical narrative, the book represents, in its larger sense, an exhibit for the defense of the democratic processes in their unending opposition to high-handed bureaucracy. The author digs into the baker's dozen of volumes containing the records of the congressional investigation of 1910 which explored the dispute resulting in the dismissal of Louis C. Glavis and Gifford Pinchot from the Department of the Interior. The story, constructed from these and other sources, has a villain—Ballinger, whom the author finds incompetent and vindictive rather than designedly criminal. If there is a hero, it is Glavis, for Mr. Mason allows him more praise than he gives Pinchot. True, a major portion of the book describes the tenacity and ingenuity Brandeis displayed throughout the hearings. But the author leaves the full measure of his stature for a later appraisal. Professor Mason gives a bill of particulars against Ballinger from the time he was Commissioner of the General Land Office, in 1907–1908, until he stepped down as Secretary of the Interior in 1911, after the “whitewashing” by the congressional committee's partisan majority. It cites chapter and page against President Taft, Attorney-General Wickersham, and lesser figures in the case. It answers the exoneration of Ballinger by Secretary Ickes, who reopened the controversy in a magazine article last year. Because it reads from the records, this book rings true and resets the values of judgment which have lately been somewhat dislocated by less thorough investigators. The volume is illustrated with contemporary cartoons. It might have profited from more quotations



from contemporary newspapers, especially those in sections of the nation where conservation was a lively issue.—HILTON P. GOSS.

In every era of reform in the relations between government and society, a time arrives when reform legislation is substantially complete and the more difficult period of administration and enforcement sets in. At this critical turning point, a genuine need arises for a stock-taking literature drawing together by field and function the laws that have come piecemeal from the legislative mills. As one volume in an excellent series designed to portray "American Government in Action," Emanuel Stein's *Government and the Investor* (Farrar and Rinehart, Inc., pp. xv, 219, \$1.00) meets that need in the field of security finance. In clear and simple narrative, the book covers the four indispensable aspects of the subject: (1) a brief résumé of security flotations and marketing; (2) a description of the conditions creating the demand for reform; (3) an exposition of the reform legislation; and (4) the administrative process in action. After describing with admirable brevity the rôle of the corporation and the securities markets in modern economy, the author points up the problems which each have thrust upon government and investors. This background is sketched with insight and fairness and is free of the emotional furor accompanying reform largely because the data are drawn from the exhaustive investigations of scholars and legislative committees. Against this background, subsequent chapters project the main provisions and detail the operations of the Securities Act (1933), the Securities Exchange Act (1934), the Public Utility Holding Company Act (1935), and the 1940 laws dealing with investment companies and advisers. This drawing together and digesting of diversified legislation is an important service which the author performs skillfully and which the publishers present in excellent format at an incredibly low price. Perhaps, therefore, it is looking the gift horse in the mouth to say that the value of the book would have been increased by an enlargement and more critical discussion of the administration of the laws; and that a bibliography of current materials on this phase of the subject would have made a real contribution.—GEORGE H. E. SMITH.

Mayne S. Howard's *Principles of Public Finance* (Commerce Clearing House, Inc., pp. vii, 438, \$4.50) follows the conventional pattern of treatises in this field in that more than three-fourths of the discussion deals with the revenue aspects of public finance. Such topics as expenditures, public budgeting, debts, and problems of war finance are dealt with in brief summary chapters which contribute little to an understanding of these vital subjects. In his treatment of revenues, the author's method is to enumerate in the respective chapters on the different kinds of taxes all the considerations that have been advanced in their favor and all the con-

siderations advanced against them. There is, in addition, an elaboration and analysis that covers both problems and points of view relevant to the specific type of taxes under discussion. The author has definite convictions as to the kind of tax system we should have. In his foreword, he predicts that the pendulum will swing away from the regimented state, and that Adam Smith's conceptions of government will again prevail. The integrated tax system which he outlines for the United States would place chief reliance upon a personal income tax. A property tax on land and a property tax on improvements on land would be restricted to local governments. Special luxury or consumption taxes on luxuries, particularly on alcoholic beverages and tobacco, should be made as high as their effective administration permits. Taxes on motor vehicles should be as high as the reduction in total transportation costs warrants, and customs revenues should be imposed primarily for revenue. His plan definitely rejects such revenue sources as the following: tangible and intangible personal property taxes, corporation taxes, general sales taxes, special consumption taxes on necessities, business taxes of all kinds, and special assessments. The author is undoubtedly optimistic, and hardly a realist, when he endeavors to devise a tax system on the assumption that the regimented state will fade away. While he is positive in his views on tax matters, it is decidedly to his credit that he proposes in every chapter problems and questions which require further research and study. This is the distinctive and unique feature of the treatise. He has supplied us with excellent suggestions for research in the public finance field. There are no footnotes or bibliographical references of any kind.—MARTIN L. FAUST.

Herman Kobbe's *Housing and Regional Planning* (E. P. Dutton and Co., pp. 233, \$3.00) devotes most of its nineteen chapters to the problems of planning and housing as they appear in the New York metropolitan region. The book is well illustrated and provides a mixture of detailed material on land and housing design and layout with a rather sketchy discussion of several fundamental problems of regionalism, transportation, education, handicraft or mechanical economy, land ownership, etc., which it is suggested can be radically reformed through the medium of a regional planning authority. To the reviewer, the most practical part of the book consists of the detailed material, derived from the author's professional experience as an architect—particularly the plans for various types of multiple dwellings and their layout on available land so as to permit of the most economical use of sunlight, the discussion of the design of stairs and roofs, and the discussion of yards and gardens. Many public administrators and economists would pick practical flaws in the proposed draft of legislation providing for a Metropolitan Regional Land Authority, in the plans for combining education and production, and in the means sug-

gested for financing the tremendous costs of social-service housing. "The Authority [presumably the author] feels that the deficit in the housing program should be finally paid for, not by levying higher taxes at all, but by effecting economies in the form of better planning and engineering. Great sums can be saved by elimination of unnecessary travel; by using foresight in the development of a sound land policy; by establishing an adequate wage level and labor schedule in the construction industries; by purchasing materials on a system suited to the vast size of the construction program; and by applying techniques of machine production and prefabrication to the operations of building." In any case, people will enjoy reading Mr. Kobbe's little book, with its practical details and its trenchant criticism of current practices. Even its more or less utopian suggestions for reform of our living patterns will stimulate the imagination and perhaps broaden the perspective of planners, if only they had something to use for money.—C. C. LUDWIG.

The second yearbook of the Harvard School of Public Administration, *Public Policy* (Harvard University Press, pp. viii, 458, \$4.00), edited by C. J. Friedrich and C. S. Mason, maintains the high level of the first yearbook. It centers around the fiscal problems of our national government, although other topics are included. In fact, the excellent opening paper, by Karl R. Bopp, deals with the struggle for power between the French government and the Bank of France. Even this, however, may have relevance to the current fiscal problems of our national government. Papers outside of the field of federal finance include studies of the new antitrust procedure, by Corwin D. Edwards; the background of the Hatch Act, by Otto Kirchheimer; control of broadcasting in war-time, by C. J. Friedrich; and national defense planning, by O. L. Nelson. The methods of approach vary as widely as the subjects. An excellent analysis of deficit financing by B. Higgins and R. A. Musgrave is an essentially theoretical discussion. An essay on federal budget procedure by R. H. Rawson is largely descriptive of present practice, although accompanied by a constructive critical appraisal of procedures. And a study of the effect of federal government expenditures and taxes on the distribution of income, by C. Stauffacher, is primarily a statistical analysis. This last paper delves into an important and neglected field of fiscal research, and it is to be hoped that the author will pursue its further. Other financial studies include two budget papers by Spencer Thompson and H. S. Perloff, a study of government purchasing by A. M. Freiberg, a paper on foreign trade and the business cycle by W. A. Salant, and studies in comparative administration by Arnold Brecht. It is not to be expected that any essential unity will be achieved in such a series of essays, but taken as a whole these emphasize the breakdown of the once sharply drawn lines between political

science and economics and between politics and administration. Most of the authors have been able to draw on all of these fields in so far as they relate to the specific problem in hand; and the resulting reorientation of materials offers a fresh approach and a fertile field for constructive research.—MABEL NEWCOMER.

In their *Michigan Retail Sales and Use Taxes* (University of Michigan Press, pp. 154, \$0.75), Professor Robert S. Ford and Mr. E. Fenton Shepard, of the University of Michigan Bureau of Government, give a very illuminating presentation of Michigan's experience with these taxes since the former was adopted in 1933 and the latter in 1937. This monograph revises, expands, and brings down to June, 1939 (in some cases to March, 1940, but in others only to 1938) Professor Ford's 1936 study of *The Retail Sales Tax in Michigan*. After an introductory chapter on the recent sales tax movement in the United States, and on types of sales taxes and their incidence, the authors discuss the general features of the Michigan sales tax; administrative problems; comparative practices in other states, particularly Ohio, Indiana, Illinois, and California (the last-named is the only one of the five having a general net income tax); financial results; and constitutional problems. They then devote a special chapter to the Michigan use tax and a short one to conclusions regarding both taxes. A good bibliography and an index enhance the value of the report. For the past several years, Michigan's three per cent retail sales tax has yielded over \$50,000,000 annually, enough to reduce property tax levies substantially—in fact, sufficient to eliminate such levies for state purposes—and also enough to increase substantially the aids to education and other funds. The use tax has brought in relatively little revenue directly, but it has enabled the state to circumvent much of the difficulty formerly encountered because of federal limitations on the state taxation of interstate commerce. Perhaps the most outstanding and unexpected impressions that the layman will get from this study relate to the great numbers and complexities of administrative and legal difficulties connected with these taxes. This monograph should be very helpful to tax students of all other states as well as to those of Michigan.—ROY G. BLAKEY.

Angered by the civil service system forced upon it by an initiated constitutional amendment last year, and fearful that Detroit and other cities will force reapportionment upon it by use of the initiative, the Michigan legislature placed on the ballot for the spring election a "constitutional amendment to make it much more difficult to amend the constitution again." Thus *The Initiative and Referendum in Michigan* (Bureau of Government, University of Michigan, pp. 100, \$0.50), by James K. Pollock, is timely indeed. The foregoing action of the legislature corroborates the au-

thor's contention that the legislature is the chief critic of direct legislation in Michigan. Under the headings of history, legal aspects, general results, electoral behavior, and political aspects, he has done a scholarly piece of research and stated his findings concisely with the aid of tables and graphs. He makes repeated comparisons with the experience of other states and concludes that Michigan voters have been sparing in their use of the initiative and referendum, that they have been conservative in their voting on proposals, and that they are satisfied with direct legislation as an institution of popular government and desire its maintenance for their own protection.—O. GARFIELD JONES.

*Government Purchasing; An Economic Commentary* (U. S. Government Printing Office, pp. xix, 330), issued as Monograph No. 19 by the Temporary National Economic Committee, makes a most welcome contribution to the limited information available on federal purchasing practices and problems. The study was prepared by Messrs. Copeland, Linnenberg, and Barbour, of the Division of Statistical Standards, Bureau of the Budget. As the authors readily admit in their Introduction, the work falls far short of being a complete picture of federal purchasing. They point to an astounding scarcity of statistical material upon which to base such a study. No one agency gathers statistics on federal purchasing as a whole. The Procurement Division has done so only for the period from December, 1937, through June, 1939, and has published the data for the twelve-month period December, 1937–November, 1938. This is included as appendix material in the present study, making up about 165 pages. To complicate matters further, the various federal agencies keeping partial records of federal buying use five different commodity classifications. On the basis of available materials, the monograph discusses the scope and characteristics of federal purchasing, evidences of bad timing and collusion, lessons of federal procurement in war-time, and possible improvements. In the latter connection, the point is made that business, and not social considerations, should control in government buying. Among improvements suggested are greater use and flexibility of long-term contracts, and governmental production of selected commodities. Brief comments on state and local buying also are included.—CHRISTIAN L. LARSEN.

A valuable addition to the critical studies of pressure politics is *Economic Power and Political Pressures*, which is Monograph No. 26 of the Temporary National Economic Committee (Senate Committee Print, U. S. Government Printing Office, pp. ix, 222). It was written by Donald C. Blaisdell, who was loaned to the T. N. E. C. by the Department of Agriculture. He writes from the double experience of political science teaching and government service, and in making his interpretation he uses aca-

demic sources as well as official reports. He covers various types and techniques of lobbying and lobbyists, including the labor front, government officialdom, and business. He surveys the activities of the large utilities, the U. S. Chamber of Commerce, and the National Association of Manufacturers. There is an unwieldy fluctuation in the policy of organized labor. Government policy lacks consistency, with changes in parties and personnel. But the author notes that business groups, particularly big business groups, change less in policy through the years and have the superior staying power combined with cohesion, invisibility, resources for pressure, and control over technology. He notes the "stalling" on the defense program until business got tax legislation to its liking, and says: "Speaking bluntly, the Government and the public are 'over a barrel' when it comes to dealing with business in time of war or other crises. Business refuses to work, except on terms which it dictates." These words have found place in labor papers. Mr. Blaisdell would modernize government as a check to the power of big private business. A large assignment!—H. CLARENCE NIXON.

*The Report of the Attorney General's Committee on Bankruptcy Administration, 1940* (U. S. Government Printing Office, pp. xvii, 330) contains an exhaustive analysis and appraisal of the actual practice of bankruptcy administration and constructive proposals for modernizing the machinery and processes thereof. The basic materials for the report were obtained by consultation with experienced administrators and organizations having specialized knowledge of bankruptcy, field studies, reports, and examination of numerous cases. The committee found that the substantive matter of the bankruptcy act was adequate for the exigencies of the time, but that the diffusion of responsibility and the lack of centralized supervision in administration frustrated the attainment of the objectives set by the law. In the opinion of the committee, these major defects can be remedied by setting up, in the administrative office of the United States courts, a division of bankruptcy with adequate managerial powers and by creating a corps of full-time salaried referees.—JOHN P. SENNING.

Austin F. Macdonald's *American City Government and Administration* (Thomas Y. Crowell Co., pp. 661, \$3.75) is almost unique among textbooks on municipal political science because it tries to give comprehensive treatment to problems of administration as well as of politics. Considerable success attends the effort in the third edition. In addition to fresh sections on such subjects as housing, welfare, motor parking, public relations, and tax exemption, there are new features such as a tabular analysis of municipal functions and a table of cases. For the most part, the merits of the earlier editions are carried over, among them, for instance, the excel-

lent chapter on "The Theory of City Government." Yet a fourth edition could be improved by correcting the facts in the footnote (p. 415) on planning in Chicago, by including the works of Henry George in the bibliography on planning, and by expanding the section on libraries.—JOHN A. VIEG.

The chief contribution of William Hays Simpson's *The Small Loan Problem of the Carolinas, with a Commentary on Regulation in Virginia* (Presbyterian College Press, pp. 154) is its study of 2,223 small borrowers in the Carolinas. Simple statistical treatment of these borrowers shows their weekly wages, length of time employed, number of dependents, amount and maturity of loans, and average annual interest rates. All these categories are classified by race. In later chapters, the author describes small loan offices and other lending agencies. He then describes the futile efforts to establish small loan regulation in the Carolinas, summarizes such regulation in other states, and finally sketches the creditable system of small-loan regulation in Virginia. There is a bibliography; also an appendix and an index. The book contains useful, yet not unusual or unexpected, information.—GARLAND DOWNUM.

*Interstate Trade Barriers* (H. W. Wilson Co., pp. 215, \$1.25) adds another to the long list of Reference Shelf compilations previously prepared by Julia E. Johnsen. Articles, testimony presented before the Temporary National Economic Committee, conference addresses, and tax association bulletins supplied the materials included in the work. As this compilation was prepared largely with a view to supplying materials for debates and public discussions, arguments both for and against interstate trade barriers are included, as well as historical material and suggestions for the future handling of the problem. This work is not advanced as an exhaustive study of interstate trade barriers, but it serves a useful purpose in collecting in one volume materials not otherwise readily available. The statement that a survey, only partially completed, has uncovered 1,489 trade-barrier provisions in the laws of the various states serves to emphasize that this is a present-day major domestic problem.—CHRISTIAN L. LARSEN.

#### FOREIGN AND COMPARATIVE GOVERNMENT

The wind of Pan Americanism (no cynicism is intended) has been sowed and a whirlwind of books on related topics is being reaped. One of the latest of these is Virginia Prewett's *Reportage on Mexico* (E. P. Dutton and Co., pp. 332, \$3.00). The book is exactly what the title suggests: a reporter's account of current Mexican developments and problems. It is a good book, though not a great one. For a popular account, this study shows a com-

mendable amount of insight and poise. The chief fault, especially in the early chapters, is one of over-simplification resulting from too much condensation. There are a few evidences of lack of adequate checking before publication; Mexican proper names are occasionally incorrectly used; and, while the lack of documentation is understandable in a study of this sort, a bibliography would be helpful even in a popular treatment. The large part of the book is devoted to a consideration of problems of the last decade. These are on the whole very intelligently handled. The author makes a valiant, and generally successful, effort to untangle the confused skein of Mexican political alignments. In much of her analysis she leans mildly to the left, although in the chapter on the 1940 election her position is strongly pro-Almazán; this position, it might be remarked without prejudice to her conclusion, appears based on too narrow a sampling of evidence. The chapter on Trotsky's assassination is brought in without sufficient articulation with the main thread of the story, but is a worth-while discussion in itself. The final chapter has a very well done analysis of Mexican strategic considerations, the development of the army, Nazi infiltration, and related topics. The author correctly emphasizes the importance of economic factors in Mexican politics and arrives, withal, at a gloomy conclusion in regard to the country's economic future.—RUSSELL H. FITZGIBBON.

In view of the probability that steadily increasing governmental control over both the recording and dissemination of objective data regarding internal conditions in Japan will make it perhaps impossible before long for anyone to get such facts, Hugh Borton's *Japan Since 1931; Its Political and Social Developments* (I.P.R. Inquiry Series, International Secretariat, Institute of Pacific Relations, pp. xii, 139, \$1.25) is a book which badly needed to be written. Into its brief pages the author has packed a mass of carefully documented material not to be found elsewhere in such small compass; material which will grow increasingly important, as sources dry up, not only for those interested in the political, economic, and social developments of Japan during a crucial decade, but for everyone concerned with the how and why of totalitarianism as a way of life. Source materials available to the author have been conscientiously explored and used. One's natural regret over the dearth of direct reference to materials in the Japanese language is softened by the knowledge that in Japan approved translations of the more important documents were, for the period covered, fairly well available, and that virtually all writings by Japanese in foreign languages had to have official approval. Under these circumstances, it is doubtful whether any fair-minded Japanese would challenge the facts as presented. In the way of supplementary comment and speculation, the author has been extremely frugal, but perhaps for this very reason all the



more effective. The reader can readily draw his own conclusions to supplement those which the author so sparingly presents.—ERNEST B. PRICE.

Scholarship is put to strange uses when it offers its results under a misleading label designed to attract attention through appeals to momentary and superficial viewpoints. *The Decline of French Democracy; The Beginning of National Disintegration*, by Mary E. Weyer (American Council on Public Affairs, Washington, pp. 73, \$1.50), is simply an investigation of French politics and government during a part of the year 1914. In a short Introduction, André Maurois attempts to answer the question, "Why then was the final result a victory in 1918, a defeat in 1940?" The little volume begins with an analysis of the Chamber elections of April and May, 1914, proceeds through chapters on the assassination of Jaurès, mobilization, war legislation, union sacrée, military events, censorship and the press, and ends with the flight to Bordeaux. In other words, it covers events from the end of April to the middle of September, 1914. The treatment of these events is good, but by no means exhaustive. The reviewer, however, finds nothing in this treatment to support the volume's title, and certainly nothing to challenge Renouvin's conclusion of 1925 that "among the great belligerent states, France was indeed that one which . . . remained most faithful to its traditions and to its constitutional principles."—J. G. HEINBERG.

Frieda Wunderlich's *British Labor and the War* (New School for Social Research, pp. 67, \$0.40) examines the whole question of British Labor's relation to the present conflict. The brochure is divided into two parts—the first concerned with the recruitment and allocation of labor; the second, with such aspects as stoppages and hours of work, wages, social services, social conditions, trade unionism, and war, and the political attitude of Labor. The author shows that Great Britain has lagged far behind Germany in systematic industrial training for the war; that the program of slum clearance has practically ceased because of the conflict; that schooling of thousands of children has become very meager; and that, quoting Clara Rackham, standards for child-labor "have melted like snow in a few months." Despite the admitted dangers which war has in store for the labor movement and democratic control, Miss Wunderlich concludes that, while "the framework of British war planning may be totalitarian, . . . the spirit remains democratic."—MULFORD Q. SIBLEY.

In *England Speaks* (Macmillan Co., pp. 222, \$1.75), A. P. Herbert, A. A. Milne, E. M. Forster, A. S. Duncan-Jones, Ronald Knox, J. R. Clynes, C. E. M. Joad, and Harold Laski defend the British position in the present conflict. Several of the essays are well done. One is particularly impressed,

for example, by Clynes's vivid contrast between the individualistic, shoddy England of his boyhood and the embryonic service state of today. One is moved by Laski's picture of the "Rights of Man" and his denunciation of their negation in contemporary Germany. But the fundamental question is evaded by the authors: while showing with considerable clarity why they believe that the British way of life is worth defending, they assume without argument that war will perform the task. They demonstrate the reality of British social progress, but the crucial problem of war's efficacy as a means of defense is almost totally ignored. This war is one "for civilization," according to Professor Joad, or for "the Nazarene," according to Father Knox; but no endeavor is made to prove that war can in fact either save "civilization" or rescue Christ. The future American Committee on Public Information might find this book helpful in its conscription of intellectuals.—MULFORD Q. SIBLEY.

In *A Selected List of Books and Articles on Japan in English, French, and German* (American Council of Learned Societies, pp. 142, \$1.50), Hugh Borton, Serge Elisséeff, and Edwin O. Reischauer have compiled a very helpful and critical bibliography of works dealing with the humanities and the social sciences with respect to Japan. Any academic institution desiring to build up a working library on Japan will find this bibliography indispensable. The comprehensiveness of the bibliography is indicated by the fact that in the field of Japanese history and politics there are some 235 titles, most of which are evaluated by the compilers. The Committee on Japanese Studies of the American Council of Learned Societies is to be congratulated upon publishing so valuable a guide.—WILLIAM BALLIS.

#### INTERNATIONAL LAW AND RELATIONS

The peace rôle of organized labor during the first World War and labor's unsuccessful efforts to secure a "people's peace" at Versailles are delineated in scholarly fashion by Austin Van der Slice in his *International Labor, Diplomacy, and Peace, 1914-1919* (University of Pennsylvania Press, pp. 408, \$4.00). This thoroughly documented study fills competently a serious gap in the voluminous literature on this period. It will be welcomed by all students of labor and international relations. Happily, Professor Van der Slice has avoided the common error of assuming that the losing side in any controversy relinquishes thereby its claim to historical significance. He persuasively demonstrates that "it is the political program which labor failed to put across that historically will loom as the most important." The author has meticulously set forth the war aims of international labor and the objectives of labor groups in France, Great Britain, and the United States. He relates the hitherto obscure story of the gradual development by labor of a concerted and internationally

directed peace policy and labor's increasing militancy in urging this program upon the Allied governments. The study shows that Wilson's Fourteen Points were substantially a recapitulation of peace terms already formulated by labor, and also demonstrates that Wilson's public diplomacy up to the Armistice was consonant with earlier policies of organized labor. In addition to developing its own peace program, labor throughout the war was prodding the governments to define their war aims. Van der Slice describes the techniques by which labor attempted to pave the way for a peace based not on victory but upon democratic negotiation. Labor's weapons were political pressure and the influencing of public opinion. According to Van der Slice, labor's failure should not minimize the importance of its effort, nor hide the fact that at the War's end labor was the only organized political group with a clear-cut peace program. Perhaps the best chapters are those in which the author recounts labor's tactics during the period between the Armistice and Versailles and the efforts of labor to mold public opinion in favor of the Wilsonian peace program. Labor's unsuccessful "Lobbying at Paris" is discussed fully in the concluding chapter. Worthy of particular attention is a twenty-one page bibliography that should prove invaluable to students of labor's peace activities.—HAROLD W. DAVEY.

Professor G. H. Bousquet has written a penetrating and provocative study of Dutch rule in the East Indies. He has also investigated French administration in North Africa and British rule in India, and his descriptions of Dutch policy are often illumined by contrasts with French and British practice. M. Bousquet emphasizes that his conclusions are based upon a residence of only five months in the Indies. He seems to have been a shrewd observer, and *A French View of the Netherlands Indies* (Oxford University Press, pp. ix, 133), is a realistic portrayal of the actual working of Dutch colonial government. He gives high praise to what Holland has done to raise the standard of living. At the same time, he concludes that she does not propose to surrender control of the empire to Indonesian nationalists, who number only a few hundred thousand intellectuals and urban workmen out of the 60,000,000 in the East Indies. The same situation existed in India twenty-five years ago; but the Dutch and British policies have been diametrically opposite. The British felt it to be their duty to provide every facility for Western education so far as the inadequate revenue allowed; and since 1919 they have also tried to conciliate the Indian nationalists by granting self-government in large instalments. The policy of the Dutch has been to discourage Western education, while promoting elementary education in the native languages. On the political side, they have combined the arrest of pronounced nationalists with a very limited instalment of self-government in the Volksraad. This body is reminiscent

of the legislatures established in India in 1909 by the Liberal government. They combined an immovable executive with an untrammelled popular opposition; and they converted the Indian nationalists into an irresponsible opposition who had unlimited power of criticism and no hope or risk whatever that they would have to assume the responsibilities of office. M. Bousquet feels that in the end the Volksraad will produce the same results as its British predecessor.—LENNOX A. MILLS.

In his *Diplomatic Relations of the United States with Haiti, 1776-1891* (University of North Carolina Press, pp. xi, 516, \$5.00), Rayford W. Logan presents a comprehensive study of the policy of the United States toward the Negro republic which was set up in America on French foundations. In preparing this monograph, the industrious author sought for materials in a variety of manuscript collections, public and private. Apparently neither he nor his agent utilized the important papers long preserved at the Quai d'Orsay entitled *Correspondance Politique, Haiti*. The book begins with a consideration of conditions existing in Saint-Domingue before Toussaint Louverture emerged upon the stage. Among other topics, the author sketches the history of Haiti in the early nineteenth century, touches rather lightly upon the recognition of the independence of Haiti by the government of Charles X, notices the conflict of interest between the Negro republic and the Dominican republic, describes in some detail the recognition of Haitian independence by President Lincoln, and discusses the designs of foreign powers upon Mole St. Nicolas, with special attention to the attempt of the United States to secure a lease of that Gibraltar of America. The narrative is enlivened by quotations from rare or unedited sources and interspersed with striking observations. Though special students of this field of international relations may occasionally disagree with the author's comments, all investigators of the history of the insular republics will find the monograph useful. A bibliography of thirty-six pages constitutes the most extensive and up-to-date list of materials concerning an insular American republic that has yet been made available to scholars.—WILLIAM SPENCE ROBERTSON.

In his *World-Wide Influences of the Cinema; A Study of Official Censorship and the International Cultural Aspects of Motion Pictures* (University of Southern California Press, pp. xvi, 320), John E. Harley emphasizes the motion picture as a means of creating better understanding between nations. He describes a number of the chief organizations interested in the peaceful services of this medium, and analyzes recent efforts to aid them, through lowering tariff barriers on films and by other means. On the negative side, he recognizes that certain films arouse ill-will. The volume deals with the problem so raised, by reviewing the efforts of official and occasional unofficial censors, located all over the globe, to check the

distribution of foreign films deemed offensive to their countrymen or to third parties. Written in the closing months of 1939 and the beginning of 1940, the volume is mainly descriptive of the conditions prevailing just prior to the present war, as typified by the assistance rendered to the distributors of educational films by the League of Nations. To some extent, however, the text does cover current problems, such as the decline in American film exports brought about by hostilities in Europe, and the tightening of news-reel censorship by the belligerent powers. Harley expresses the hope that this disturbed situation will soon be replaced by an era when films can again carry the spirit of peace throughout the globe. Much of the volume consists of quotations from current literature or original material obtained directly from censors stationed in other lands, interspersed with somewhat limited comments by the author. Though the volume is essentially a detailed compilation, it throws so much light on the international flow of ideas as to make it excellent reading.—WILLIAM BEARD.

If Canada and the United States are viewed as a whole, they constitute another "British Isle" because of their common topography, their common culture, their common economic ideas, their common devotion to democracy, and their common need of an island military strategy. Thus a new and challenging perspective intrigues the reader of F. R. Scott's *Canada and the United States* (World Peace Foundation, pp. 80, \$0.50). The Ogdensburg Agreement of August 17, 1940, establishing a permanent Canadian-American Defense Commission, added another piece of administrative machinery to bind the destinies, not only of two great neighbor nations, but also of two great commonwealths—namely, the British Commonwealth of Nations and the Pan-American Union. Indeed, the author's theme centers upon the far-reaching implications of the Ogdensburg Pact. It is Dr. Scott's contention that such a military plan must inevitably involve an economic plan and a political plan for all of North America; that such a plan for North America, in its turn, involves for the United States the assumption of interests and responsibilities throughout the globe, and for Canada, the assumption of interests and responsibilities in the whole of the western hemisphere—a reciprocation of interests heretofore not entertained. Truly in pushing the frontiers of the future, this book justifies its place in the series "America Looks Ahead." Written by a Canadian who is master of his subject, who understands Americans, and who is deft at the art of interpreting his people to them, this book is worthy of serious contemplation and wide circulation.—FRANCES REINHOLD FUSSELL.

In *The Struggle for North China* (I. P. R. Inquiry Series, International Secretariat, Institute of Pacific Relations, pp. xiv, 247, \$2.00), George E. Taylor throws much light upon the failure of the Japanese to solve in three

and a half years, an "Incident" which they expected to conclude in three months. During the first two years of the present war, Professor Taylor, who is now head of the department of Oriental studies at the University of Washington, was professor of political science at Yenching University in Peiping. His conclusions are thus based, in part, upon personal observations in territories under Chinese control as well as in areas under Japanese occupation. The struggle which he describes is not merely—or even primarily—that of armed forces; it is the underlying political and economic struggle in which a hastily improvised Chinese administration—the Border Government of Hopei, Shansi, and Chahar—has been blocking the efforts of a Japanese-sponsored Provisional Government at Peiping to govern and exploit in the interest of Japan the invaded Northern provinces. In July, 1937, when the "China Incident" started at Lukouchiao, these provinces were politically the most backward part of China; Japanese pressure since 1935 had effectively excluded all efforts at reform, and the peasants "hated the very name of government." To foreign observers, it was unthinkable that this population could be so organized as to offer serious resistance to Japanese plans. By the following March, however, the organization of the rural districts under the Border Government was an accomplished fact, and since that date Japan's puppet régime at Peiping has been an almost total loss. "The main fact that stands out in this struggle for government is that the Japanese had no political weapons which were of any value to them among people not under their immediate military control . . . they relied not on law but on spies, not on political obligation but on political subjugation, not on good will but on terrorism . . . On the other hand, . . . the principles and policies of the Border Government afford one of the finest historical examples of the approximation of political means to political ends" (pp. 95-98).—G. NYE STEIGER.

Democracy is government by talk. Wherever democracy survives, public policy is arrived at by discussion. Whether any particular democracy, or democracies in general, shall or shall not perish from the earth depends largely upon whether public discussion is relevant and rational, and is followed by decision and action. Ever since the publication of *The Great Illusion* a generation ago, Norman Angell has made notable contributions to the relevancy and rationality of public discussion of international affairs, both in England and in America. His latest book—*America's Dilemma: Alone or Allied?* (Harper and Brothers, pp. x, 226, \$1.75)—exhibits his best qualities at their best: incisive analysis of issues, admirable lucidity of thought, singular cogency of reasoning, and a unique persuasiveness flowing from a rare felicity of expression. These ten chapters are addressed to Americans in general and to isolationists in particular. Sir Norman assumes that political animals, including Americans, can learn from experi-

ence, including that of Europeans. His second chapter, with appropriate quotations from Lindbergh, Beard, Upton Close, and other apostles of "minding our own business," is the best brief statement of the isolationist position which this reviewer has ever encountered. The remaining chapters are the most closely reasoned refutation of that position which has yet appeared. Item by item, the author punctures current hallucinations. Point by point, he states the case for aid to Britain and for American leadership in world reconstruction. This is more than a tract for the times, however, for it is rich in penetrating insights and in shrewd characterizations of persons and peoples. Sir Norman is a political scientist and a social psychologist as well as a propagandist. *America's Dilemma* therefore deserves the careful attention of academicians as well as of citizens in general. —FREDERICK L. SCHUMAN.

Although *Dollars in Latin America; An Old Problem in a New Setting* (Council on Foreign Relations, pp. vii, 102, \$1.50), by Willy Feuerlein and Elizabeth Hannan, presents few facts unfamiliar to the specialist in inter-American relations, it nevertheless is a convenient summary of the investments of United States citizens in Latin America and the problems arising from them. It also contains a number of suggestions regarding economic and diplomatic procedure—suggestions which harmonize for the most part with recent phases of the Good Neighbor policy: loans for constructive purposes under joint management, credits to ease exchange difficulties, and plans for the disposal of surplus commodities. The main problems are lack of Old World markets and economic nationalism in Latin America. The volume is sane and impartial; the authors appreciate and discuss both sides of the problems that have arisen. One phase of the subject which they largely neglected, however, may be of greater importance than the authors have realized, namely, the record of the investment bankers of the United States in the 1920's. The truth, if set forth fully and judiciously, probably would be on the whole helpful in the development of harmonious relations. In this reviewer's opinion, many Americans, both North and South, have generalized too freely on the basis of certain instances of bribery and excessive profits. A sober narrative of the whole story—with due attention to bond issues previously distributed in European markets—would correct misconceptions and possibly change attitudes in respect to both government bonds and direct investments. The whole subject demands fuller treatment. —J. FRED RIPPY.

Described on its title-page as a "compilation of facts," any criticism of *The European Possessions in the Caribbean Area* (American Geographical Society, pp. v, 112, \$1.00) for its analytical shortcomings is largely beside the point. The four authors, Raye R. Platt, John K. Wright, John C.

Weaver, and Johnson E. Fairchild, sought "to bring together in convenient form factual information needed for following the news while the need for such information is still pressing" (p. v). This useful volume contains data on the population, physical geography, resources, industries, trade, government, and strategic importance of these possessions. The six-page "list of references" only emphasizes the need for the present publication by demonstrating the unsatisfactory state of the literature on the subject. Doubtless reflecting the professional interest of the authors, the volume allots space more generously to geographic than to political data. The material is arranged by sovereignties involved. This classification would be well-suited to a volume emphasizing colonial policy, but obscures the geographic similarities of such areas as British Guiana, French Guiana, and Surinam. Comparative tables would permit much of the statistical data to be more readily grasped. Especially useful for political scientists is the essay on the strategic importance of these colonies.—WILLIAM T. R. FOX.

If, as someone once remarked, in times of peace we prepare for war, the corollary is no less true that in times of war we ought to prepare for peace. And Georges Kaeckenbeeck's *De la Guerre à la Paix* (Publications de L'Institut Universitaire de Hautes Études Internationales, No. 22, Genève, Suisse, p. 101) is only one of the many volumes dealing with the subject of peace after war which must inevitably flood the book marts. Here in five short chapters Professor Kaeckenbeeck views the subject not only from the standpoint of abstract theory but also with some special regard to such historical facts as the Hague Conventions, the Treaty of Versailles, the Stimson Doctrine, etc. Although, to be sure, this study has endeavored to treat the matter in its more general implications, it does not altogether do away with the feeling, as indeed it should not, that it might well serve as a guide for those charged, or to be charged, with the establishment of peace after the present war. And if to this be added the author's own fitness and competence to deal with such a subject, the usefulness of such a book becomes indeed great.—BENJAMIN MUNN ZIEGLER.

As a contribution to the fiftieth anniversary of the Pan American Union, the Carnegie Endowment has brought out *The International Conferences of American States: First Supplement, 1933-1940* (Carnegie Endowment for International Peace, pp. xxix, 558, \$3.50). It is a collection of official documents of the principal Pan American conferences since 1933, and brings up to date a similar collection published in 1931 for the conferences from 1889 to 1928. There are also valuable appendices which summarize data, hitherto not readily available, for the 159 technical and special conferences which have taken place since 1891 and for the 73 commissions and other bodies which have been set up. An index of persons and a subject-index complete the volume.—JAMES T. WATKINS IV.



## POLITICAL THEORY AND MISCELLANEOUS

"When political philosophy is produced in quantities," says George H. Sabine in the introduction to his excellent edition of *The Works of Gerrard Winstanley* (Cornell University Press, pp. 686, \$5.00), it is a sure symptom that society is going through a period of stress and strain." This he holds true of the period in which Winstanley wrote, which he characterizes as a time in which all the intellectual, religious, moral, social, and political traditions were broken apart and put together in a new pattern. He cites as symptomatic of "what was taking place" and "as a sign for the future" the treatises of Hobbes, Harrington, and a little later of Locke, as well as the great mass of popular writing of which, along with those of the Levelers, the works of Winstanley are significant examples. The editor, as did Gooch before him, refers to Winstanley's doctrine and the Digger movement as communistic, a designation perhaps justified by the program for the collective tilling of the common land and the suggestion of the ultimate nationalization of all land and all means of production. Winstanley's program and his philosophy, however, had about it essentially little of later Marxian communism. In it there is no place for economic determinism nor for violence. Necessary changes were to be effected directly or indirectly through the spirit of universal love operating in the heart of man. Unlike Marxism, also, his program included a plan for an ultimate political commonwealth. Though a note of irrationalism is struck in the insistence on the Inner Light, the "incomprehensible spirit" from which the creation flowed and which continually works in it," this very insistence indicates a marked difference from communistic materialism and imparts to Winstanley's doctrine something much more akin to the present democratic emphasis on the dignity of man. Indeed, so fundamental are the problems plumbed and so universal is the genius of Winstanley, that whether one accepts his solutions or not, his writings are replete with significance for the present crisis, and show him worthy of the labor expended in the production of this admirable companion piece to Woodhouse's recent edition of the *Army Debates*.—ELLEN DEBORAH ELLIS.

In *Technology and Society* (The Macmillan Co., pp. xiv, 474, \$3.00), S. McKee Rosen and Laura Rosen survey the economic, social, and political effects of recent technological developments on our institutional life. After a foreword by Professor Louis Wirth and an introductory chapter on "National Policy and Technology," the authors proceed with a popular description of technological advances in manufacturing, transportation and communication, agriculture, construction, and the professions. The remainder of the book is devoted, in a part for each, to a description of the economic, social, and political effects of these developments. The recurrent theme emphasizes the need for planned social action, based not only

on the present application of modern inventions, but likewise on those inventions not yet applied which may produce revolutionary effects on our way of life and on our institutions. Though such planning is both necessary and desirable, the authors give ample attention to the forms of resistance to change on the part of groups largely affected by new inventions and by the general public. The national government is called upon to assume leadership in planning, even though jurisdictional obstacles impair the effective application of any broad plan. A contrast is drawn between regional planning by the method of interstate coöperation as evidenced in the Port Authority of New York and the Ohio River Sanitation Compact, and by the national government in the T. V. A. program. The selection of these and other examples suggests methods which governmental units have developed to meet the challenge of technology. Well selected tables, charts, and pictographs based on statistical data of recent vintage add to the value of the book. As a text for the student taking but a single course in social science, this book deserves serious consideration.—JOHN D. TOMLINSON.

In *The Development of Religious Toleration in England; Attainment of the Theory and Accommodations in Thought and Institutions, 1640-1660* (Harvard University Press, pp. 499, \$5.00), the fourth in a series of books, W. K. Jordan brings to a close his scholarly and authoritative study of the growth of religious toleration in England. The whole series covers the period from the Reformation to the Restoration. The present volume deals with lay and moderate thought on the subject of religious toleration during the two revolutionary decades, and with the re-orientation of Anglican and Roman Catholic thought under the impact of militant sectarianism. The author concludes that "the theory of religious toleration stood substantially complete in 1660," and that the reaction which set in during the first decade of the Restoration merely delayed the "process of accommodating institutions" to the principle generally accepted by "the responsible and sober thought of the nation." In the last chapter, Professor Jordan, by way of summary to the four books in the series, points out the causes of the development of religious toleration and appraises the changes which it involved. Since the author, in presenting the individual contributions to the theory of toleration, gives little attention to their relation to the general intellectual, social, and political trends of the time, the chief value of the volume is its utility as a reference book.—HENRY JANZEN.

F. C. Bartlett's *Political Propaganda* (Cambridge: At the University Press; New York: The Macmillan Co., pp. 158, \$1.25), the first of a series of studies of current problems under the general editorship of Ernest Barker, is a concise analysis of the troublesome problem of propaganda.

Intended as a summarization for the general reader rather than an exhaustive scientific treatise, *Political Propaganda* will repay the more serious student for a careful reading. Professor Bartlett, a psychologist, avoids the obfuscations frequently characteristic of his profession. To the author, "propaganda is an organized and public form of the process . . . [of] suggestion." Though he does not commit himself definitely upon how far propaganda may appeal to the rational as well as the emotional nature of man, it is implicit in his argument that he thinks reason as well as emotion plays a significant rôle in propaganda. "He who despises and underrates human instincts and emotions will be ineffective. It is equally true that he who despises and underrates human intelligence will himself, with greater certainty year by year, be despised (p. 103)." Mr. Bartlett refutes the Hitlerian view that constant repetition is the best propaganda since the masses are completely stupid. The tiny volume is an objective warning against absolute statements and easy generalizations concerning human nature and the ability to persuade men to any position simply by employing subtle or magnificent falsehoods. There is no magic to propaganda, no mesmerism based upon some esoteric knowledge of the black art. Undoubtedly propaganda has been much over-propagandized and is sadly in need of being debunked. Intelligent books like *Political Propaganda* should be prophylactic as well as curative.—JASPER B. SHANNON.

Mr. Charles E. Carpenter is a man with a message about a near-panacea which he explains in *Private Enterprise and Democracy* (Longmans, Green and Co., pp. 217, \$2.50). Mr. Carpenter's intentions are good; his heart is in the right place; and many of his ideas are pertinently looking in the right direction. The thesis may be stated briefly. The disparity between general consumer spending and savings is one of the fundamental defects of our current economy. This disparity arises from an abuse of the corporate form of business, from shortsighted business price policies, from poorly designed tax laws, from an uncritical acceptance of saving as an unalloyed virtue. Mr. Carpenter, properly enough, distinguishes between over-saving and over-investment, both in his analysis and in his proposed remedies. To correct this central difficulty, Mr. Carpenter suggests a co-operative form of profit-sharing in which labor, management, and stockholders all share the risks and the gains. He has been strongly influenced, apparently, by the Nunn-Bush Shoe Company plan. With some ancillary devices and the exception of agriculture, he thinks this coöperative scheme may be generally applied in the business-industrial world. Corollary parts of his plan include wholesale overhauling of the tax system, with income, estate, and gift taxes dominating the resulting structure—all to be collected by the federal government; by constitutional amendment, the president should be empowered to oblige either house of the Congress re-

jecting a presidential proposal to stand for election; and finally some means must be found to improve the population on a eugenic basis. To the informed person, the book contributes little; to the uninformed, it is likely to be misleading because of the engulfing lacunae in both logic and information.—HARVEY PINNEY.

To believe the absurd is the true test of faith among all fanatics, ecclesiastical and political. No myth of our time is more absurd than the myth of "race," nor more insane and hideous in its social consequences. No myth is adhered to with more stubborn devotion. Social scientists and laymen alike must therefore find answers to such questions as: What is race? What is scientifically *known* about racial differences? What generalizations are warranted from the data? What is *believed* about race and why, and wherein are the beliefs true or false? These questions and a host of others are answered by Ruth Benedict in *Race: Science and Politics* (New York: Modern Age Books, pp. ix, 274, \$2.50). The first part of her latest work is a lucid and brilliant summation of what modern anthropologists know, and do not know, about race. The second part is a résumé and critique of the principal doctrines of "racism." Professor Benedict justly observes: "No travesty of anthropomorphic facts is too startling for propaganda to announce if the propaganda is backed by force of arms and concentration camps." Not least among the merits of this excellent study are the concise quotations from anthropologists and racists alike ("What They Say") at the close of each of the eight chapters, and the compilation of recent resolutions of scientific associations on the subject. The closing chapter, "Why Then Race Prejudice?," has implications which statesmen, social psychologists, and students of politics would do well to take to heart: "To understand race persecution, we do not need to investigate race; we need to investigate *persecution*. . . . To understand race conflict, we need fundamentally to understand *conflict* and not *race*. . . . Whatever reduces conflict, curtails irresponsible power, and allows people to obtain a decent livelihood will reduce race conflict. Nothing less will accomplish the task."—FREDERICK L. SCHUMAN.

Professor T. J. Haarhoff, author of *The Stranger at the Gate; Aspects of Exclusiveness and Coöperation in Ancient Greece and Rome, with Some Reference to Modern Times* (Longmans, Green and Co., pp. 140), is a Boer with a British education. In this book it is his endeavor to apply the experience of Graeco-Roman civilization to the contemporary racial and cultural problems of the Union of South Africa. South Africa, like the Roman Empire, is composed of two separate cultural and linguistic constituents. Professor Haarhoff examines the relations between the Greeks and the Romans from the time when the two cultures first established

direct contact with each other until they blended together into the cosmopolitan civilization of the Roman Empire and attempts to deduce from this examination what lessons there may be that can be profitably applied in South Africa today. The author has read widely both in the ancient authors and in the standard modern works. His conclusions are always intelligent, though rarely profound. It is, of course, quite impossible for an American reviewer to determine in how far Professor Haarhoff has succeeded in achieving his aim, that is to say, whether in fact his countrymen, Boers and British, will feel that his book has contributed to a solution of the problems which face them. One point, however, must be mentioned. The Graeco-Roman civilization of the Roman Empire had no internal problem even remotely analogous to the vast Negro population of the Union of South Africa. And it is precisely the kaffirs whom Professor Haarhoff to all intents and purposes completely disregards. This omission gives his book an air of unreality.—CHARLES EDSON.

In celebration of the tenth anniversary of the dedication of the Social Science Research Building at the University of Chicago, the social scientists there invited colleagues elsewhere to meet with them in December, 1939, for addresses and round-table discussions on questions of method and scope in the social sciences. The papers, and summaries of the discussions, have been edited by Dr. Louis Wirth and published by the University of Chicago Press in a volume entitled *Eleven Twenty-Six* (pp. xv, 498, \$3.50). The title is taken from the address of the building, 1126 East 59th St. A bibliography of writings during the decade by social scientists then affiliated with the University comprises about two hundred pages of the volume. While much of the discussion recorded reflects the indecisive and inconclusive aspects of talk about scope and method, the cumulative and corporate achievement of the social scientists thus physically housed together so advantageously, and frequently engaged upon coöperative projects related to the local community and region, emerges clearly. Political scientists will join in congratulating their colleagues in "1126" on their accomplishments during the first decade and in extending good wishes for continued success in their collaboration with other social scientists in the future.—JOHN M. GAUS.

The compilation, *Constitutional Chaff—Rejected Suggestions of the Constitutional Convention of 1787, with Explanatory Argument* (Columbia University Press, pp. 197, \$2.25), by Jane Butzner, is timely. It is illuminating to reëxamine the discussions which engaged the Founding Fathers. Under each of the Constitution's provisions are set forth the plans which would have replaced or modified it and the arguments in their favor. The author hopes that "this book will be liked by those who enjoy speculating, for

example, on the course of our government if the Constitution had provided that the Senate sit constantly and have full authority over foreign affairs—in other words, by those who read for entertainment” (Preface). More, however, than entertainment is presented. Two appendices show, respectively, what the authors of the Constitution said about judicial review and about a limitation on the number of terms for the president. A third appendix quotes from Major William Pierce’s character sketches of the Convention delegates. The book is without documentation. The source used was *Documents Illustrative of the Formation of the Union of the American States* (House Document No. 398, 69th Congress, 1st Session). The author has found much interesting “chaff,” and such a volume should have been printed long ago.—MONA FLETCHER.

Philip Davidson’s *Propaganda and the American Revolution* (University of North Carolina Press, pp. xvi, 460, \$4.00) contains a great wealth of material gathered from original sources and woven into a history of the propaganda of the period. There are quotations from preachers, pamphleteers, newspaper editors, poets, and plain agitators. The quotations have been taken from so many sources and something has been said about so much that at least one reader ended with the feeling that the author would have left a clearer picture if he had given longer excerpts from fewer sources and had discussed them more thoroughly. In the light of our interest in contemporary war propaganda, it is interesting to find clergymen and college presidents presented as among the most active war propagandists of the Revolutionary era. Glittering generalities and name-calling were devices useful then as now. The patriot champions of freedom did not hesitate to suppress opposition newspapers and to hush Tory clergymen by force. Mr. Davidson’s evidence of the propaganda superiority of the promoters of the Revolution over the Tories does not lead to new conclusions, but it does contribute to a better understanding of the nature of that superiority.—CHARLES W. SMITH, JR.

The perplexing problem for text writers in the field of economic regulation is the constantly changing content of legislation and significant administrative developments. Charles C. Rohlfsing, Edward W. Carter, Bradford W. West, and John G. Hervey have attempted to meet this difficulty by successive editions of their *Business and Government* (Foundation Press, Inc., pp. xvi, 803, \$4.00). The fourth edition is now available. The changes introduced have not altered significantly the previous qualities of the volume. The new legislation and court decisions have been added to the pertinent chapters. The chapter on “The Constitution of the United States” has been dropped, and a chapter on “War and Business” added. The latter contains the data on the current defense program avail-

able at the time of publication and some discussion of the United States experience in the first World War. The chapter, "The Control of Unfair Trade Practices," has become "Unfair Trade Practices and Consumer Protection," and now includes food and drug legislation. There is no discussion of the regulation of insurance. It is a little annoying to have Chief Justice Marshall's aphorism on the power of taxation misquoted.—CHARLES B. HAGAN.

A very valuable corrective for an over-simplified interpretation of the internationalism of Karl Marx appears in Solomon F. Bloom's *The World of Nations; A Study of the National Implications in the Work of Karl Marx* (Columbia University Press, pp. 225, \$2.50). Mr. Bloom stresses Marx's willingness to acknowledge the importance of nations as facts, his emphasis upon national differences and national traditions (which went so far as to modify substantially the application of his general analysis to such a country as Russia), his emphasis upon the national class (the class which leads a particular nation along the line of progress), his classification of nations in terms of their progress and capacity for progress, and his acceptance of a limited number of large nations as the basis of an ultimate socialist system. Mr. Bloom's study is comprehensive, objective, and generously documented; he is successful in relating his special subject to the major theses of Marx's thought. The book will certainly have value, not only as a critical study of an important and often misinterpreted aspect of Marx's thought, but also as an illuminating study of one phase of nineteenth-century nationalism.—JOHN D. LEWIS.

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

CLYDE F. SNIDER  
*University of Illinois*

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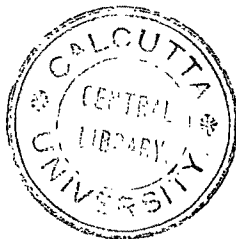
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## THEORIES OF FEDERALISM UNDER THE HOLY ROMAN EMPIRE

HEINZ H. F. EULAU

*University of California*

A fact little appreciated by American political scientists is the relatively early emergence of federalism as a working concept of political theory in the Holy Roman Empire of the seventeenth century.<sup>1</sup> But although these federal theories run ahead of corresponding theories elsewhere, it must be pointed out that political and legal conditions peculiar to the medieval Empire retarded an even earlier appearance. For centuries, the constitution of the Empire had retained its feudalistic structure. Many conspicuous changes, however, had taken place in the course of its development and had filled that structure with an entirely different content. The main result of the Empire's constitutional evolution had been its gradual transformation from an originally fairly unitary state into a federalistic organization of *de facto* sovereign states.<sup>2</sup> It might be supposed, therefore, that the highly articulated territorial organization of the Empire would have easily served as fertile soil on which contemporary political theorists and jurists might

<sup>1</sup> It is true that Aristotle was well aware of interstate relations approaching a federalistic character, such as defensive and commercial unions; but he appreciated them only in so far as he wanted to prove that such unions did not create a new state, i.e., a perfect and self-sufficient *polis*. Cf. H. Rehm, *Geschichte der Staatsrechtswissenschaft* (Freiburg, 1896), 82.

<sup>2</sup> C. Bornhak, *Deutsche Verfassungsgeschichte* (Stuttgart, 1934), 1. The best short description of the constitution of the Holy Roman Empire from the point of view of federalism may be found in L. LeFur and P. Posener, *Bundesstaat und Staatenbund in geschichtlicher Entwicklung* (Breslau, 1902), 75-89. These authors conclude that the Empire was a "species of federal state." E. A. Freeman, *History of Federal Government in Greece and Italy* (2nd ed., London, 1893), 622-3, writes: "Long before that kingdom was formally dissolved, the relation between its several members had become much more truly a federal one than anything else."

have founded an elaborate theory of federalism. Unfortunately, such an assumption is entirely unwarranted. On the contrary, throughout the Middle Ages, neither political nor legal theory paid the slightest attention to the fact that the emergence of the modern state—out of the welter of feudal relationships—was territorial and particularistic in nature, and that it was accomplished at the cost of destroying the authority of the Empire.<sup>3</sup> Even when federalism was finally applied as a practical concept for the purpose of determining the political and legal relationships between the Imperial and the territorial authorities, only a very few scholars undertook a federalistic construction of the Empire's constitution.

The reasons for the late development of federal theories and their reluctant acceptance by comparatively few theorists are twofold. In the first place, the changes in the Empire's constitution had been so slow and gradual that contemporary writers had little cause to modify their basic assumptions. Secondly, these assumptions had been derived from the *Corpus juris*, in spite of the fact that Roman law was wholly alien to political conditions as they had historically grown up in the Empire. For the *Corpus juris* knew only one state, the universal Roman Empire which, as an organization *sui generis*, was sharply distinguished from all other organizations of a corporate character.<sup>4</sup> The glossators slavishly transferred this concept of a universal state to the constitution of the medieval Empire in spite of its fundamentally different constitutional framework. They ascribed *summa potestas* to the Emperor, treated the territorial princes as *praesides provinciarum*, placed the Diet (Reichstag) on a par with the old Roman *senatus*, described the free cities as *municipia*,<sup>5</sup> and determined accordingly the place of each of these agencies of government in a purely excogitated constitutional system. The medieval glossators did not recognize any state-republics and kingdoms. All these territorial communities

<sup>3</sup> The literature on the emergence of the German territorial states is vast. Cf. F. Hartung, *Deutsche Verfassungsgeschichte vom 15. Jahrhundert bis zur Gegenwart* (Leipzig, 1922), 37–61; here is also found a good critical list of the literature on the subject. Also: G. v. Below, *Vom Mittelalter zur Neuzeit* (Leipzig, 1924), 22–44; H. Spangenberg, *Vom Lehnstaat zum Staendestaat* (Muenchen, 1912), 116–126; J. C. Bluntschli, *Deutsche Staatslehre* (2nd ed., Noerdlingen, 1880,) 249–60.

<sup>4</sup> O. Gierke, *Das deutsche Genossenschaftsrecht* (Berlin, 1881), III, 141.

<sup>5</sup> J. St. Puetter, *Literatur des deutschen Staatsrechts* (Goettingen, 1776), I, par. 16; O. Stobbe, *Geschichte der deutschen Rechtsquellen* (Leipzig, 1860–64), II, 123. Cf. W. Koehler, "Die deutsche Kaiseridee am Anfang des 16. Jahrhunderts," *Historische Zeitschrift*, Vol. 149 (1933–4), 35–56.



were for them merely corporate associations to which no state-personality could be attributed.<sup>6</sup> Even after Bartolus had discovered sovereignty as the chief characteristic of the state and had divided all corporations into *universitates, quae superiorem recognoscunt*, and *universitates, quae superiorem non recognoscunt*,<sup>7</sup> and after the possibility was thus given to work out an appropriate theory of federalism, constitutional writers continued, up to the end of the sixteenth century and even later, to rely on the *Corpus juris* as the only legally tenable authority in their extremely strained interpretation of the constitution of the Empire. The same is true of the interpretation of the constitutional nature of the many leagues and confederations which came into existence at the end of the Middle Ages. These state associations were constructed as *universitates*, subordinate to the *corpora* and *collegia* of the *Corpus juris*, and were placed in the same category as the *collegia* of doctors, scholars, artists, etc. Only their corporate character was emphasized, while their possible quality as states was absolutely denied.<sup>8</sup> In practice, of course, these hallucinations of theorists were disregarded, and the contradiction between constitutional doctrine and the actual state of affairs became more outspoken as the political power of the territorial subdivisions of the Empire steadily increased with the advent of the modern world.

At the beginning of the seventeenth century, however, a new tendency set in as an independent theory of constitutional law of the Empire gradually developed.<sup>9</sup> The realization spread that Roman law could not immediately be applied to Imperial constitutional conditions. It was more and more acknowledged that the Imperial constitution did not spring from Roman law, but from ancient as well as recent Germanic charters, such as the Golden Bull or royal and Imperial capitulations.<sup>10</sup> Two writers in particu-

<sup>6</sup> Gierke, *Genossenschaftsrecht*, III, 198-202; cf. his *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien* (3rd. ed., Breslau, 1913), 229-232.

<sup>7</sup> These *universitates* were given more or less the attributes of the Roman state: "habet merum imperium in seipsa et tantam potestatem habet in populo quantam Imperator in universo"; Bartolus, 1.7 D. 48, nr. 14, as quoted by Gierke, *Genossenschaftsrecht*, III, 382, note 118; *Althusius*, 231, note 14.

<sup>8</sup> Gierke, *Genossenschaftsrecht*, III, 355-6, 420, 640.

<sup>9</sup> R. Stintzing, *Geschichte der deutschen Rechtswissenschaft* (Muenchen, 1880), I, 719-21.

<sup>10</sup> Dominicus Arumaeus (1579-1673) is said to have been the founder of the modern study of constitutional law in the Empire. A collection of monographs and dissertations, written by himself and others, was published in five volumes under the

lar contributed to paving the way for a more valid interpretation of the Empire's constitution. Hermann Conring discovered the real historical course of the Reception, and proved that Roman law had been introduced into Germany only since the fifteenth century.<sup>11</sup> Almost simultaneously with Conring, Hippolithus a Lapide presented a constitutional interpretation of the Empire entirely free from all principles of Roman law.<sup>12</sup> The works of both these men were epoch-making in that they definitely broke with the hitherto unquestioned dogma of the absolutely binding authority of the *Corpus juris*.

In the meantime, Bodin's definition of sovereignty had been fully accepted by Imperial political theorists. The progressing disintegration of the Empire and the consolidation of the territorial powers made an answer to the theoretically fundamental question of the location of sovereignty in terms of the new Bodinian doctrine inevitable.<sup>13</sup> For if sovereignty was acknowledged as the chief theoretical attribute of the territorial state, it obviously conflicted with the traditional Roman doctrine of the *majestas* of the Emperor.

Before the story of the change from the Roman law interpretation to a federalistic construction of the Empire's constitution

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title *Discursus academici de jure publico* (1616-23). The first comprehensive and systematic commentary on the constitution of the Empire proper was published by Johann Limnaeus (1592-1663) as *Jus publicum Imperii Romani Germanici* (Strassburg, 1629-32), 3 vols. Limnaeus was the first scholar who used exclusively Germanic constitutional documents in his system of constitutional law; cf. Stintzing, *op. cit.*, II, 211-20. On the constitutional importance of the capitulations, see F. Hartung, "Die Wahlkapitulationen der deutschen Kaiser und Koenige," *Historische Zeitschrift*, Vol. 107 (1911), 306-44.

<sup>11</sup> Hermann Conring (1606-81) was a professor at Helmstadt, first of medicine, afterwards of law. He wrote on many subjects. The work in question here is his *De origine juris Germanici* (1643). Stobbe, *op. cit.*, II, 418-19, considers Conring the real founder of historical jurisprudence in Germany.

<sup>12</sup> Hippolithus a Lapide (pseudonym for Philipp Bogislaus von Chemnitz, 1605-78) was a writer and publicist who in his *De ratione status in imperio nostro Romano-Germanico* (1640) accepted Bodin's concept of sovereignty, which he attributed to the territorial princes as a whole. This forced him to classify the Empire as an aristocracy, the Emperor being merely its executive organ. Cf. the thorough study of F. Weber, "Hippolithus a Lapide," *Historische Zeitschrift*, Vol. 29 (1873), 254-306.

<sup>13</sup> Bodin himself pointed out that at first he considered the territorial princes and cities to be sovereign and therefore *jure foederis ac societatis inter se obligati*; but later he declared the Empire to be an aristocratic unitary state in view of the *jura majestatis* exercised, in his opinion, by the Imperial Diet; cf. *De republica libri six* (2nd Latin ed., 1591), bk. ii, ch. 6. Concerning Bodin's acceptance and influence in the Empire, cf. Stintzing, *op. cit.*, II, 34-5.

can be related any further, it would be well to recall the outstanding constitutional events that took place at the end of the Thirty Years' War. It may be said that the Peace of Westphalia virtually concluded the constitutional development of the Holy Roman Empire.<sup>14</sup> The constitutional provisions of the peace treaties of 1648 did not remove, but rather accentuated, the fundamental weakness of the Empire's constitution, namely, the theoretical inconsistency between the legal status of the territorial states and their actual political power. For all practical purposes, the peace treaties destroyed the constitution of the Empire as such by sanctioning almost completely the territorial supremacy (*Landeshoheit*) of the territorial powers, without stipulating in any way their constitutional obligations toward the Emperor and the Empire. No doubt the territories were the undisputed victors in the controversy with the Emperor; the provisions of the peace treaties prevented the Emperor from acting in any important matter without the consent of the Imperial Diet.<sup>15</sup> Contemporary political and legal theory, however, which now, under the influence of historical studies and the widespread acceptance of the Bodinian concept of sovereignty, became primarily interested in determining the constitutional position of the Emperor and of the territorial authorities (*Reichsstaende*) in the government of the Empire,<sup>16</sup> reflected

<sup>14</sup> One hundred forty years later, J. St. Puetter wrote in his *Historische Entwicklung der heutigen Staatsverfassung des Deutschen Reiches* (Goettingen, 1786), III, 214-15: "Alles zusammengekommen, was ich von der Verfassung des Deutschen Reichs bisher historisch zu entwickeln gesucht habe, ist dieselbe in der Hauptsache noch jetzt ebenso, wie ich sie von den Zeiten des Westphaelischen Friedens geschildert habe."

<sup>15</sup> Hartung, *Verfassungsgeschichte*, 94-102; Bornhak, *Verfassungsgeschichte*, 46-54, 134-42. G. Meyer, *Lehrbuch des deutschen Staatsrechts* (5th. ed., Leipzig, 1899), 55, points out that the Peace of Westphalia, by granting treaty-making rights to the territorial states, implied their complete victory, and he maintains that since 1648 the dissolution of the Empire was a decided matter. While Meyer, *ibid.*, 59, describes the Empire after 1648 as a disintegrating feudal state, denying its federalistic character altogether, S. Brie, in his *Theorie der Staatenverbindungen* (Stuttgart, 1886), 126, calls it a "federal state." This latter view is rejected by J. B. Westerkamp, *Staatenbund und Bundesstaat* (Leipzig, 1892), 452, who classifies the Empire after 1648 as a "confederation." Cf. K. Korman, "Die Landeshoheit in ihrem Verhaeltnis zur Reichsgewalt im alten deutschen Reich seit dem westfaelischen Frieden," *Zeitschrift fuer Politik*, Vol. 7 (1914), 139-70; H. E. Feine, "Zur Verfassungsentwicklung des Heiligen Roemischen Reiches seit dem westfaelischen Frieden," *Zeitschrift der Savigny Stiftung fuer Rechtsgeschichte, Germanische Abteilung*, Vol. 52 (1932), 65-133. The authors of *The Federalist*, whose discussion of the Empire in No. 19 is excellent, regarded the Empire as a "confederation."

the constitutional conflict between the Emperor and the rebellious states as it had raged prior to 1648. Consequently, most of these writers interpreted the constitution of the Empire in accordance with their own political predilections. Those who had favored the Emperor declared the Empire to be a monarchy; those who had found themselves on the side of the princes now conclusively proved that the Empire was an aristocracy. Other writers compromised and placed the Empire in the category of mixed forms of government.<sup>17</sup> Such a superficial classification was made possible because the vast majority of writers did not abandon the old working concepts borrowed from Aristotle. Instead of giving them up as altogether useless in connection with the actual constitutional framework of the Empire, they arbitrarily attempted to connect them with their new, though politically colored, insight into what they believed to be the actual conditions.

The most important question, however, namely, in what relationship the territorial governments stood to the Imperial government, regardless of the latter's governmental form, was almost completely ignored. Most writers uncritically described the Empire as a unitary state. Otto von Gierke asserts, however, that already at the beginning of the seventeenth century Johannes Althusius paved the way for a federalistic construction of the Empire.<sup>18</sup> It is true that Althusius emphasized, in his corporate theory of political organization, the local autonomy of the provinces; but the term "federalistic" as used by Gierke is misleading in this connection because, as Professor Friedrich points out, "Althusius never wearies of emphasizing the unitary, collectivistic nature of any symbiotic group."<sup>19</sup> What Althusius intimated may be characterized in present terminology as local government or decentralization rather than federalism. Althusius, indeed, accepted Bodin's idea of the loose union of fully sovereign states, and divided the *consociationes* and *confoederationes* into *plenae et non*

<sup>18</sup> Stintzing, *op. cit.*, II, 38-54: "Der Streit um die Souveränität und die staatsrechtlichen Schulen"; Gierke, *Genossenschaftsrecht*, IV, 209-23.

<sup>17</sup> The various theories of sovereignty as expounded in the Empire are well described in A. Dock, *Der Souveränitätsbegriff von Bodin bis zu Friedrich dem Grossen* (Strassburg, 1897). <sup>18</sup> Gierke, *Genossenschaftsrecht*, IV, 227; Althusius, 25-6.

<sup>19</sup> C. J. Friedrich, in his introduction to *Politica Methodice Digesta of Johannes Althusius* (Cambridge, 1932), lxxxvii. The *Politica* was first published at Herborn in 1603. Professor Friedrich's introduction precedes a reprint of the third (1614) Latin edition.

*plena*. Under the former he understood the amalgamation of several states with common fundamental laws into *unum reipublicae corpus et eandem rempublicam*.<sup>20</sup> In this system, sovereignty is apparently shared by all; while in the *confoederatio non plena* the allied states retain their full sovereignty and are merely obligated to mutual help, peace, and amity among themselves toward common enemies.<sup>21</sup> Such a system represents a "confederation" indeed, but it is highly doubtful that Althusius ever appreciated the distinctive qualities of the *confoederatio plena* in contrast to his *confoederatio non plena*.

Gierke reports, furthermore, that the doctrine of Althusius had some influence in so far as from it was directly evolved the phrase and concept "composite state" (*zusammengesetzter Staat*). He mentions Hoenonius, who, "following Althusius throughout, distinguished between *respublica simplex*, consisting of one state, and every state composed of several states or enlarged to a *regnum* or *imperium*, applying to the latter the federalist idea in the term *respublica composita*."<sup>22</sup> Besold accepted this concept of the *civitas composita* and applied it to the constitution of the Empire, locating sovereignty or *majestas* exclusively in the whole. He characterized the territories as member-states because they were entrusted with an independent exercise and representation of the Empire's sovereignty. Besold developed a special theory of the *status reipublicae subalternae* as a non-sovereign and hence not real "sub-state," which, nevertheless, is analogous in nature to the sovereign "super-state."<sup>23</sup> While Besold, on the basis of the *majestas realis* of the people, ascribed *majestas personalis* as a single and indivisible attribute to the Emperor and the Imperial Diet in common and construed the powers granted to the "sub-states" as special rights, implying that they merely had the privilege of exercising and representing the sovereignty of the whole,<sup>24</sup> another writer,

<sup>20</sup> *Ibid.*, ch. 27, par. 27-9.

<sup>21</sup> *Ibid.*, par. 30.

<sup>22</sup> Gierke, *Althusius*, 245. The quotation is taken from the translation of this work by B. Freyd, published as *The Development of Political Theory* (New York, 1939), 267. P. H. Hoenonius (1556-1640) taught law at Herborn and published *Disputationum politicarum liber* (3rd. ed., Herborn, 1615).

<sup>23</sup> Gierke, *Genossenschaftsrecht*, IV, 228; *Althusius*, 245. Christoph Besold (1577-1638) was a jurist and voluminous writer on legal and ecclesiastical subjects. Lack of access to the works of these and other writers forced this writer to rely on Gierke's work and notes, and made it impossible to verify the latter's exposition of the theories of the authors under consideration.

<sup>24</sup> Gierke, *Development*, 288-9, note 49.

J. Lampadius, advanced a theory of divided sovereignty by characterizing the territorial supremacy (*Landeshoheit*) as an independent power with regard to certain governmental activities, and consequently as *majestas*.<sup>25</sup> Carpzov, finally, suggested that by virtue of the Empire's mixed constitution the territorial authorities participate in the exercise of sovereignty in a dual manner. *Conjunctim* they share a part of the Empire's *summa majestas* as members of the Imperial Diet. But *disjunctim* they possess a *species quaedam majestatis*, in that they are supreme within their territorial domains.<sup>26</sup>

The first writer who, by canalizing the various trends of federal theory, succeeded in presenting a comprehensive federal interpretation of the Empire's constitution after 1648 was a student of Hermann Conring by the name of Ludolph Hugo.<sup>27</sup> His judicious and penetrating dissertation was not primarily concerned with the constitution of the Empire proper, but rather with the constitutions of the territorial states. It endeavored, however, to explain the relationship between the Empire and the territories in terms of federalism. Hugo not only elaborated more precisely and systematically than Besold the latter's notion of the *civitas composita*, but he also presented much more succinctly than Lampadius the idea of a division of sovereign powers between "super-state" and "sub-states."

<sup>25</sup> Gierke, *Genossenschaftsrecht*, IV, 228, and note 89. J. Lampadius (1593-1649) was a jurist and minister in the duchy of Brunswick. Gierke refers to his *De republica Romano-Germanica* (1634).

<sup>26</sup> Gierke, *Genossenschaftsrecht*, IV, 229. B. C. Carpzov (1595-1666), a jurist. Gierke refers to his *Commentarius in Legem Regiam Germanorum, sive capitulationem Imperatorium* (1640). Carpzov held, however, that the territorial authorities are unconditional subjects of Emperor and Empire, not of the Emperor alone. The territorial supremacy is a mere *exercitium* of the Imperial sovereignty which *proprio jure* belongs to the whole Empire; cf. Gierke, *ibid.*, note 90.

<sup>27</sup> Ludolph Hugo (1630-1704), *Dissertatio de statu regionum Germaniae et regimine principum summae Imperii reipublicae aemulo* (Helmstadt, 1661). Since Hugo's work is not available in the United States, this writer freely used Brie's exposition of Hugo's ideas in S. Brie, *Der Bundesstaat* (Leipzig, 1874), 17-20. Brie seems to believe that Hugo's book was forgotten in the following century, and that he rediscovered it. This is not quite true. J. J. Moser, *Von Teutschland und dessen Staatsverfassung ueberhaupt* (Stuttgart, 1766), 528, indicates that the work was generally known. K. F. Eichhorn, the historian of German constitutional law, used it in his *Deutsche Staats- und Rechtsgeschichte* (5th ed., Goettingen, 1844), IV, 376-8, par. 551. It should be pointed out, however, that all these writers were looking only for what the title promised: the *regionum status*. They did not realize that the *status regionum* was determined by a new insight in the *status Imperii*.

Hugo opened his discussion with the observation that two different kinds of government exist in the Empire: the Empire as a whole forms one state; but every individual territory has its own authorities, and thus forms a special state within a higher state. As his task, Hugo proposed to study the origin and nature of the division of the Empire into two kinds of government as well as to explain the distribution of supreme power between the government of the Empire and the territorial governments.<sup>28</sup> There can be no doubt that Hugo was the first publicist who correctly posed the fundamental question as to the constitutional nature of the Empire.

In his search for the origin of the division of powers, Hugo proved a true disciple of his master, Conring, in adopting a strictly historical method.<sup>29</sup> After having sketched the origin and development of *Landeshoheit* within the territories, Hugo studied the history of the Germanic constitution since the foundation of the Empire by the Franks. He found the historical basis of the composite state in the difficulty of giving efficient government and uniform laws to a large realm. In order to overcome this handicap, it had been to the best advantage of the Empire to divide governmental functions among smaller territorial subdivisions and to grant far-reaching powers to the rulers of these territorial units.<sup>30</sup> The modern concept of "devolution" could not find a more lucid description. The nature of the relationship between the Empire and the territories lies, on the one hand, in the dual position which the latter occupy as states, and, on the other, as component parts of the greater whole. Hugo seemed well aware of the constitutional differences between federalism and decentralization: if the territorial authorities are merely officials of the "super-state" and obey its orders, the states would be nothing but provinces; the German territories, however, although subordinate to the Empire as a whole, are independent and must therefore be regarded as real states.<sup>31</sup>

<sup>28</sup> Brie, *Bundesstaat*, 17.

<sup>29</sup> J. Jastrow, "Pufendorfs Lehre von der Monstrositaet der Reichsverfassung," *Zeitschrift fuer Preussische Geschichte und Landeskunde*, Vol. 19 (1882), 46, maintains that Hugo acquired his inductive historical method from Aristotle: "Was er von Aristoteles gelernt hat, das ist die wahrhaft historische Methode, in der Politik niemals mit der Theorie, sondern stets mit den historisch gegebenen Verhaeltnissen zu beginnen und aus ihnen erst die Doktrin abzuleiten."

<sup>30</sup> Brie, *Bundesstaat*, 18.

<sup>31</sup> That Hugo clearly distinguished between territorial states and simple provinces is implied, for instance, in the unequivocal statement that the former "*suo munere tamquam proprio funguntur*," as quoted by Brie, *Bundesstaat*, 18, note 7.

Through this constitutional arrangement, the Empire differs not only from unitary states, but also from such permanent unions as the Achaean League, the United Provinces, or the Helvetic Confederation. By thus showing that the territories were subject to the whole in spite of their statehood, while the members of these other federalistic systems were not really subject to any higher authority at all,<sup>32</sup> Hugo was also in this connection the first to recognize the theoretical distinction between the later concepts of "federal state" and "confederation."

Hugo realized that the subordination under a higher power conflicted theoretically with the Aristotelian conception of the state, and he admitted that doubts concerning the quality of territorial statehood might be justified. But his practical approach helped him to minimize this dogmatic difficulty. He asserted that, even if the territories were not real states, their power was so closely akin to sovereignty that they may at least be regarded as being analogous to states.<sup>33</sup>

It is at this point in his argument that Hugo, in order to justify his doctrine of *duplex regimen* in the Empire, set forth the principle of the division of powers between the whole and its parts within the federation.<sup>34</sup> As an authoritative yardstick for such a division, he accepted the basic idea that certain national functions of government are better administered by the "super-state," while the individual states are better prepared to take care of the needs affecting their particular localities.<sup>35</sup> Here again Hugo's practical attitude toward the fundamental problem of federalism is to be admired in view of the purely juristic discussions of his contemporaries. He gave even greater force to this idea by emphasizing that every authority should be assigned those powers which it can exercise more efficiently than the other. For Hugo was far from believing that the distribution of powers in a federal system is absolute and unchangeable.<sup>36</sup> Foreign affairs, for instance, are usually within

<sup>32</sup> In the composite state there is a *societas foedere contracta civitatum domina*, while in a confederation there are *ipsae civitates foederum dominae*, as quoted by Jastrow, *op. cit.*, 377, note 3.

<sup>33</sup> Brie, *Bundesstaat*, 19.

<sup>34</sup> It must be pointed out, however, that the principle of a division of powers was for Hugo of secondary importance. He simply utilized it to prove the kinship of the *Landeshoheit* with the *summa potestas* of the Empire; cf. *ibid.*, 18, note 10.

<sup>35</sup> "Diviso quodammodo inter summam et inferiores Respublicas civili imperio, illa quidam ea, quae ad communem omnium, hae autem, quae ad singularum Regionum salutem pertinent, gubernant." As quoted *ibid.*, 19, note 11.

<sup>36</sup> *Ibid.*, 19.



the competence of the whole. But concrete political conditions in the Holy Roman Empire—in this instance, its extreme weakness in international relations—makes it necessary for the territories to deal independently with foreign nations. While religious supremacy was formerly an attribute of the Empire and should properly lie within its competence on account of the universal character of religion, the *jus reformandi* is being granted to the territories as a result of the religious controversies. The general laws of the Empire do not prevent the territories from legislating concerning the same matters; but territorial laws should comply with the laws of the Empire. For this reason there is need for an Imperial court system which can correct judicial errors of the territorial courts and redress denials of justice.<sup>37</sup>

Equally pragmatic was Hugo's answer to the problem of avoiding permanent conflict between the whole and its parts, as well as between the parts themselves. Similarity of constitutions above all, but also the same historical origin and the same nationality, serve to prevent civil wars.<sup>38</sup> Reliance on political and historical rather than merely juridical circumstances determined Hugo's explanation of federal relationships.

Hugo explained that his interpretation was quite independent of the question as to who exercised the authority of the Empire as a whole. It may be located in one person or a federal diet; the problem of the constitutional nature of the composite state is not affected thereby. His own view with regard to the Holy Roman Empire after 1648 was that both Emperor and Imperial Diet, in common, represented the sovereignty of the whole. It is worth remembering in this connection that Hugo's work was the only one of its time which, without following or ostensibly opposing the prevailing theories, was based on scholarly observation. But, although it was so very different in its essentials from all that had been written about the Imperial constitution, it deviated very little therefrom in its external form. Hugo diligently cited the customary authors, and often he invoked the authority of Aristotle. Yet he was far from measuring the constitution of the Empire by Greek standards. He passed over in silence all reasoning concerning the unity of the state.<sup>39</sup> Important for him was the fact that there are two real authorities: the territorial powers, and above them the authority of the Empire.

<sup>37</sup> *Ibid.*, 20.

<sup>38</sup> *Idem.*

<sup>39</sup> Jastrow, *op. cit.*, 378.

Nothing particularly novel may be found in Hugo's ideas today; they seem crude. But they were curiously strange at the time of his writing. Two things in particular are worth recalling as well: first, that Hugo did not want to write a treatise on the constitution of the Empire, but on territorial constitutions; and secondly, that he did not write a heated political pamphlet as did most of his contemporaries, but a learned dissertation. Therefore he cannot be expected to assail the political evils of his time. Yet one remark which he made concerning the unnatural *status* of the Empire, namely, that many functions which by their very nature should properly fall within the competence of the Empire, but which on account of the latter's defectiveness are exercised and ought to be exercised by the territories, indicates sound political wisdom.<sup>40</sup>

Hugo's observations assured the concept of the state composed of states (*Staatenstaat*) a permanent place in German constitutional doctrine. If he neither clarified nor mastered the theoretical difficulties inherent in federalism as analyzed or conceived today, it is true, nevertheless, that after Hugo, "the concept of the composite state never disappeared again completely from political science."<sup>41</sup> Although Hugo's book was well received in learned circles and his theory accepted by some publicists,<sup>42</sup> it did not enter the arena of theoretical disputations. Most scholars were still more interested in classifying the Empire in Aristotelian categories. Even those who adopted the view that the Empire was a state composed of states concentrated their learned arguments much more on the question of the governmental form of the central government which Hugo had only incidentally touched. After long-winded disputations, they usually came to the conclusion that the Empire was a mixture of aristocracy and monarchy, and that the Imperial Diet, in common with the Emperor, represented the sovereignty of the Empire. But as far as federal theory is concerned, they did not go beyond Hugo's exposition.

Only the great philosopher Leibniz gave federal theory a formulation approaching modern views even closer than Hugo. Leibniz

<sup>40</sup> H. v. Treitschke, "Samuel Pufendorf," *Preussische Jahrbuecher*, Vol. 35 (1875), 634-5, discussing Hugo's work in connection with Pufendorf, is not only excessively polemical, but obviously unjust and mistaken when he accuses Hugo of "humble pussyfooting, lack of juristic precision, playing with unclear pictures."

<sup>41</sup> Gierke, *Althusius*, 246.

<sup>42</sup> Cf. Brie, *Bundesstaat*, 21, notes 19 and 21; Gierke, *Althusius*, 246, note 50, on the acceptance and elaboration of Hugo's theory by Vitriarius, Boecler, Brueggemann, Oldenburger, and others.

made his occasional remarks on federalism in connection with the constitutional problem as to whether the territories had the right to send their own representatives, in addition to those of the Emperor, to the peace negotiations at Nymwegen. He was probably commissioned by Ludolph Hugo, who was then vice-chancellor at Hannover, to render an opinion on this question. In treating it, Leibniz adopted the pseudonym "Caesarinus Furstenerius" in order to express his desire to do justice to the claims both of the Emperor and of the territories.<sup>43</sup> Whether he accomplished this intention is another question.

Leibniz succeeded in arriving at a fairly advanced conception of federalism because, unlike most of his contemporaries, he did not build his theoretical construction of the Empire's constitution on an absolutist definition of sovereignty.<sup>44</sup> He not only admitted the possibility of a theoretical limitation of sovereignty, but he also found, in the examples of the Empire, the Helvetic Confederation, and the United Provinces, that several territories may be united into one body politic without detriment to the territorial supremacy (*superioritas territorialis*) of any single one of them. For they maintain armed forces not only for internal policing purposes, but also for defense against foreign nations with which they even may conclude treaties.<sup>45</sup> It is interesting to compare at this point Hugo's and Leibniz' methods. While the former came, on the basis of amazingly accurate historical induction, to the modern concept of "devolution" as the determining factor in the explanation of federalism in the Empire, Leibniz approached the problem through a thoroughly pragmatic and empirical method.

Leibniz distinguished between a *confoederatio* and a *unio* as types of federal systems. The difference between the two is to him the same as between a *societas* and a *collegium* in private law. A *societas* is a body accidentally composed of individuals; its income is divided equally among all. But a *collegium* or *corpus* somehow con-

<sup>43</sup> Cf. the introduction of O. Klopp to his edition of *Die Werke von Leibniz* (Hannover, 1865), IV, 4-8. On G. W. Leibniz (1646-1716), see Dr. Bresslau, "Leibniz als Politiker," *Zeitschrift fuer Preussische Geschichte und Landeskunde*, Vol. 7 (1870), 317-48; F. Hecht, "Leibniz als Jurist," *Preussische Jahrbuecher*, Vol. 43 (1879), 1-25.

<sup>44</sup> J. K. Bluntschli, *Geschichte der Neueren Staatswissenschaft* (3rd. ed., Muenchen, 1881), 182, concluding his discussion of Leibniz' concept of sovereignty, writes: "Man sieht, sein Souveraenitaetsbegriff ist nur ein relativer, der Beschraenkung und der Grade faehig, kein einfacher und absoluter."

<sup>45</sup> Caesarinus Furstenerius, in Klopp, *op. cit.*, 57.

stitutes a new civil person with a corporate personality, and its income does not belong to the individuals who compose it, but to the *corpus* as a whole. Decisions of such an organization are made by majority vote, while the decisions of a *societas* require unanimity. A *confoederatio* is therefore an international *societas* merely entered into by verbal agreement; its armed forces are joined only in case of instantaneous need. A *unio*, on the other hand, must have a definite administrative authority with powers over the component parts.<sup>46</sup> The test for proving the true statehood of a union, Leibniz postulated, is its ability to find acceptance of the laws which it promulgates concerning the general welfare.<sup>47</sup> As far as the Holy Roman Empire is concerned, Leibniz believed that it is a *unio* the component members of which are the territories, in spite of the fact that they enjoy what Leibniz called *suprematus*.<sup>48</sup>

Both practical and theoretical reasons were responsible for the failure of federalism to win for itself a prominent place in the constitutional thinking of the Holy Roman Empire. In the first place, federalism did not, and could not, satisfy the two great political factions into which German political writers were split, because its exponents endeavored, on a non-political basis, to be fair to the rights of the Emperor as well as to those of the territories.<sup>49</sup> In the second place, an authority of the first rank opposed with weighty theoretical arguments the interpretation of the Empire as a "federal state." Disregarding the learned dissertations of the German publicists with their Aristotelian approach to the study of the

<sup>46</sup> *Idem*.

<sup>47</sup> Leibniz knew that his theory of federalism was quite unorthodox. He gave an excellent summary of the effect of orthodox theories of sovereignty on federalist constructions in the following sentence: *nam, admissa unitate Reipublicae, credidere sublatam in singulis membris libertatem sive suprematum; vel concessa singulorum membrorum libertate, non unam Rempublicam, sed unum foedus constitui sunt arbitrati; ibid.*, 58.

<sup>48</sup> *Suprematus*, in Leibniz' meaning, is not the same as "sovereignty," although it implies more than the traditional *superioritas territorialis* (*Landeshoheit*). Leibniz severely criticized the absolute sovereignty theory of Hobbes because it could not be applied to the German Empire: *Scio, quae hic a me disseruntur de natura Reipublicae, non posse conciliari cum sententiae accuratissimi viri Thomae Hobbi Angli . . . sic Hobbium audiemus non erunt apud nos [i.e., in the Empire] nisi Anarchiae merae; idem*.

<sup>49</sup> Cf. the statement of Hert, the editor of Hugo's and Pufendorf's works, that Hugo, in the conflict between the supporters of the Emperor and those of the Princes, *insigni mediae sententiae temperamento reipublicae genus describit, veteribus ignotum et quod apud iuniores nomen nondum invenit*; as quoted by Jastrow, *op. cit.*, 378.

Empire's constitution, Samuel Pufendorf, in his famous work on the German constitution,<sup>50</sup> declared that the Empire is neither a monarchy nor an aristocracy nor a mixed form of government, but an irregular and monstrous structure which fluctuates between a limited monarchy and a system of allied states, chiefly tending towards the latter.<sup>51</sup> This characterization of the Empire, which was in no way determined by political predilections, fell like a bombshell into the midst of the current juristic debates and obscured Hugo's and Leibniz' discussions.<sup>52</sup> Numerous attacks were at once directed against Pufendorf. But they only served to arouse his desire to present his ideas in systematic form in his following works.<sup>53</sup>

Pufendorf's method, unlike Hugo's, consisted in juristic and logical deductions from *a priori* conceived assumptions.<sup>54</sup> He unconditionally accepted the views of Bodin and Hobbes on the absolute unity and complete independence of the sovereign state.<sup>55</sup> From the

<sup>50</sup> The work was published under the pseudonym Severinus de Monzambano Veronensis, *De Statu Imperii Germanici ad Laelium fratrem, dominum Trezolani liber unus* (1678).

<sup>51</sup> *Nihil ergo aliud restat, quam ut dicamus Germaniam esse irregulare aliquod corpus et monstro simile*; as quoted by Jastrow, *op. cit.*, 335.

<sup>52</sup> Pufendorf's "Monzambano" has been thoroughly studied in all its aspects by J. Jastrow in the already cited article, "Pufendorf's Lehre von der Monstrosität der Reichsverfassung," *supra*, 13, note 29; cf. Treitschke's article on Pufendorf, *supra*, 18, note 40.

<sup>53</sup> Especially in the dissertations "De Systematibus Civitatum" and "De Republica Irregulari," collected in *Dissertationes academicae selectiores* (London, 1675). This work was not available to the writer of this study. But Pufendorf's main ideas on the subject under consideration were repeated in his great work on natural and international law, *infra*, 24, note 55.

<sup>54</sup> Hugo Preuss, in his famous work on federalism, *Gemeinde, Staat, Reich als Gebietskoerperschaften* (Berlin, 1889), 16, explains the fundamental disagreement between Pufendorf and Hugo in terms of their different methods. He points out that this first controversy concerning the constitutional nature of the Empire, which centered in the problem of federalism, demonstrated the delicate alternative either to deny the theoretical possibility of a federal state, and thus to offend against historical and political reality, or to affirm this possibility and therewith to contradict prevailing political theory. Preuss believes that Hugo and Pufendorf occupy a permanent, prototypical position in this controversy because all later authors differed chiefly in accordance with their attitude towards the historical-political or the philosophical-critical method as already accepted by these two forerunners.

<sup>55</sup> S. Pufendorf, *De Jure Naturae et Gentium Libri Octo*, bk. vii, ch. 4: "On the parts of supreme sovereignty and their natural connexion"; and ch. 6: "On the characteristics of supreme sovereignty." This writer used the translation of the 1688 edition prepared by C. H. and W. A. Oldfather for the series "The Classics of International Law" (Oxford, 1934). On Pufendorf's political theory in general, see Bluntschli, *Geschichte*, 136-58; Stintzing, *Geschichte*, III, 19-23.

nature of the state thus conceived, he deduced its sovereignty; from the nature of sovereignty, its indivisibility; and from this indivisibility, the monstrosity of any state supposedly composed of other states. A state cannot contain within itself several other states.<sup>56</sup> Any relationship into which several states enter must preclude damage to their sovereignty. Pufendorf recognized, therefore, only two kinds of federalistic systems as theoretically valid: common action through a common ruler ("personal union"), or a permanent alliance for the common exercise of certain affairs in accordance with the principles of international law, which fully preserves the sovereignty of the individual states.<sup>57</sup> From the simple treaty, the *systemata foederatum*, as he called this permanent alliance, is distinguished by its durability and by the constant control of certain powers of sovereignty through common consent.<sup>58</sup> To effect such common agreement, a confederate assembly and a confederate council may be set up; these agencies hold delegated powers only, and withdrawal by any state at any time is theoretically always possible.<sup>59</sup> Consequently, Pufendorf rejected the possibility of majority decisions because they constitute, if not a transition to the unitary state, at least a deviation from the real nature of the state system.<sup>60</sup> Pufendorf thus introduced into political theory the concept of "confederation" (*Staatenbund*) as a permanent, though purely contractual, association of fully sovereign states for the purpose of exercising collectively certain rights of sovereignty.

In spite of his rejection of the concept of "composite state" and his insistence on "confederation" as the only normal type of federal organization, Pufendorf had finally to admit that intermediate forms might exist, and that the Holy Roman Empire in particular stood in the middle between unitary state and confederation.<sup>61</sup> His great theoretical error consisted in regarding every "monstrosity" as a fault of the constitution. If it is proved that a constitution of a state does not correspond to any constitutional theory, the reason may indeed lie in the fact that not all is well in that particular state; but it may also lie in the imperfection of theory. Unless the latter is disproved, the former cannot be inferred with logical necessity. Pufendorf, however, never undertook such proof.

Many publicists followed Pufendorf in rejecting the concept of

<sup>56</sup> Pufendorf, *op. cit.*, bk. vii, ch. 5, par. 12-3.

<sup>57</sup> *Ibid.*, par. 16-7.

<sup>58</sup> *Ibid.*, par. 18.

<sup>59</sup> *Ibid.*, par. 19, 21.

<sup>60</sup> *Ibid.*, par. 20.

<sup>61</sup> Brie, *Bundesstaat*, 23-4.

the "federal state."<sup>62</sup> But those who did not want to brand the constitution of the Empire a "monstrosity," "had nothing but the choice between the two equally desperate devices of constructing the existing Empire as a mere confederation or of reverting to the old conception of it as a unitary state."<sup>63</sup> Some influential writers, however, who generally leaned on Pufendorf's theory, imperceptibly transferred again, in the words of Gierke, "the concept of the *systemata civitatum irregulare*, as realized in the German Empire, into the concept of *respublica composita*, to which the 'irregularity' was imputed as a characteristic merely for the sake of academic theory."<sup>64</sup> J. N. Hert,<sup>65</sup> the editor of both Hugo's and Pufendorf's writings, for instance, strongly upheld the views of the former. In the notes which he added to his great Frankfurt edition of Pufendorf's *De Jure Naturae*, he explained his disagreement with Pufendorf on this point by arguing for the validity of an intermediate category between the unitary state and the confederation in the sense elaborated by Ludolph Hugo.<sup>66</sup>

The century following Hugo and Pufendorf did not advance the study of constitutional theory in the decadent Empire, the reason being that interest centered primarily in questions of detail. Either one despaired of the possibility of arriving at any judgment concerning the whole, or one held, as J. J. Moser did, that the theorizing about the constitutional nature of the Empire was superfluous, useless, and even harmful.<sup>67</sup>

Thomasius and his school of political science, which flourished for many generations,<sup>68</sup> elevated Pufendorf's views on federalism to the prevailing doctrine of the eighteenth century. The most important jurists and theorists followed in Pufendorf's footsteps. Although their theories deviated in exceptions, the fundamental notions were the same. Most conspicuous, however, was the gradual transformation of the concept of *systema civitatum* into that of *respublica composita*, either *regularis* or *irregularis*. Thomasius

<sup>62</sup> Cf. the names mentioned by Gierke, *Althusius*, 248, note 54; G. J. Ebers, *Die Lehre vom Staatenbunde* (Breslau, 1910), 24-9.

<sup>63</sup> Gierke, *Althusius*, 248, notes 55-6.

<sup>64</sup> *Ibid.*, note 57.

<sup>65</sup> Johann Nicolaus Hert (1652-1710) was a leading jurist and professor of law at the University of Giessen; cf. Stintzing, *Geschichte*, III, 62-3.

<sup>66</sup> Jastrow, *op. cit.*, 391; Gierke, *Althusius*, 248, note 58; Brie, *Bundesstaat*, 24, note 37.

<sup>67</sup> Moser, *op. cit.*, 517, 549.

<sup>68</sup> Christian Thomasius (1655-1728) was a professor at Leipzig and Halle, a philosopher, a man of general culture, and a jurist who bitterly attacked Aristotle and scholasticism; cf. Stintzing, *Geschichte*, III, 71-111.

himself, in his lectures on Pufendorf, pointed out that state systems (i.e., personal unions and confederations) might be called *respublicae compositae* in contrast to *respublicae simplices*, while their governmental forms may be *regulares*, *irregulares*, or *mixtae*.<sup>69</sup> His student, Titius,<sup>70</sup> identified completely the concepts *civitas composita* and *systema civitatum*.<sup>71</sup> But in spite of the use of the term implying a "composite" or "federal" state, no real progress can be noticed as far as their meaning is concerned. Most writers emphasized the contractual basis of the federal relationship. The idea of a corporate union such as a "federal state" was made impossible by the dominant strict theory of sovereignty. This was not altered by the resumption of the term *civitas composita*, because it was not recognized as a state above states, but as a union of states based on loose coördination.

The weakening of the theory of sovereignty through the rise of the principle of the separation of powers after the middle of the eighteenth century cleared the road for a revival and advancement of the idea of "federal state." A tendency set in which attributed to the *systema* a position superior to that of its member-states. In his last great work, Heineccius<sup>72</sup> presented a theory of society according to which one *societas* is built over and above another. The *systema civitatum* stands above simple states which are called *civitates majores*. The *systema* is a *coalitio* of several states under preservation of their governmental form and independence into *unam majorem societatem* for the purpose of common counsel and the execution of common affairs, *ut velum unum regnum constituunt*.<sup>73</sup> Heineccius did not mention how far a relationship of domination and subordination was implied in his concept of the *systema*. J. G.

<sup>69</sup> *Institutiones jurisprudentiae divinae* (1687), bk. iii, ch. 6, par. 57-59; as cited by Gierke, *Althusius*, 248, note 57.

<sup>70</sup> Gottlieb Gerhard Titius (1661-1714) was a law lecturer and professor at Leipzig; cf. Stintzing, *Geschichte*, III, 138-41.

<sup>71</sup> *Specimen juris publici Romano-Germanici* (2nd ed., Leipzig, 1705), bk. vi, ch. 7, par. 34: *civitas composita sive systema civitatum est corpus civile ex pluribus civitatibus ita compositum, ut unaquaeque civitas summum ac plerumque etiam plenum imperium habeat, sed ita limitatum, ut quaedam eius partes coniunctim ab omnibus sint exercenda*; as quoted by Ebers, *op. cit.*, 28-9. The same ideas were expressed by J. H. Boehmer, *Introductio in jus publicum universale* (2nd ed., Halle and Magdeburg, 1726), and N. H. Gundling, *Jus naturae et gentium* (Halle, 1728).

<sup>72</sup> Johann Gottlieb Heineccius (1681-1741), law professor at Halle and one of the greatest eighteenth-century German jurists; cf. Stintzing, *Geschichte*, III, 179-198.

<sup>73</sup> *Elementa juris naturae et gentium* (Halle, 1737), bk. ii, par. 14, 119, 127.



Daries,<sup>74</sup> on the other hand, pointed out that the *systema civitatum* is actually superior to its member-states, and he even derived therefrom the obligation of the individual citizens to be more concerned with the well-being of the system than with that of their particular states. But the *systema civitatum* does not as yet form a new state as in the case of the *unio incorporativa*, where one state joins another, or as in the case of the *unio non incorporativa*, where several states form a new unitary state.<sup>75</sup>

More formal and complete than these theories was the system of federalism developed by Daniel Nettelbladt.<sup>76</sup> Denying sovereignty as an essential attribute of the state, Nettelbladt described the composite state as an aggregate of several states subject to the constitutional power of the composite state.<sup>77</sup> From the composite state, he distinguished clearly the "system of states," which is a mere federation of states into a society without state-character; both personal and real unions; and the "incorporation," in which the incorporated community ceases to be a state and exists simply as an autonomous member of a unitary state.<sup>78</sup> The composite state may be of centripetal or centrifugal origin.<sup>79</sup> The central state, as well as the member-states, may be monarchical or republican. A *duplex potestas civilis* is the main mark of distinction of the composite state; there is a highest (*summa*) and a subordinate (*subordinata*) authority; this latter power, although dependent on the former, is exercised independently of or in concurrence with the authority of the composite state.<sup>80</sup>

On the whole, it may be said that Nettelbladt and the other writers of the school of natural law did not go very much beyond Pufen-

<sup>74</sup> Joachim Georg Daries (1714–1791) was a professor of moral and political philosophy at Jena and Frankfurt an der Oder. He wrote many works on metaphysics, ethics, law, and politics; cf. Stintzing, *Geschichte*, III, 284–5.

<sup>75</sup> *Institutiones jurisprudentiae universalis* (2nd. ed., Frankfurt, 1754), par. 768–72.

<sup>76</sup> Daniel Nettelbladt (1719–1791) was one of the greatest German teachers of natural law in the later eighteenth century, a student of Wolff; cf. Stintzing, *Geschichte*, III, 288–99.

<sup>77</sup> *Systema elementare universae jurisprudentiae naturalis* (5th. ed., Halle, 1785), par. 1160: *respublicae diversae quae simul constituunt unam Republicam, cujus potestati civili subjectae sunt*; as quoted by Gierke, *Althusius*, 249, note 60. Nettelbladt's work is not available in this country. But good use may be made of the extensive and detailed notes of Gierke in his *Althusius*, *loc. cit.*, and *Genossenschaftsrecht*, IV, 540, notes 190–91; also in his *Development*, 291, note 60.

<sup>78</sup> *Systema elementare*, par. 1172–73.

<sup>79</sup> *Ibid.*, par. 1183. <sup>80</sup> *Ibid.*, par. 1175–76.

dorf's doctrine of federalism. The time was ripe, however, for a man who through his historical insight and legal training could maintain that the existence of a central and of local governments in Germany was historically conditioned, whatever abstract theory might postulate, and that the study of their relationship to one another must form the starting point for any sound interpretation of the constitution of the Empire.<sup>81</sup> By the end of the eighteenth century, Hugo's effort to construct the Holy Roman Empire as a federal state had fallen into such oblivion that Johann Stephan Puetter,<sup>82</sup> one of the greatest connoisseurs of the literature of German public law, could declare that his own interpretation was entirely new.<sup>83</sup> Puetter contended that the historically given constitutional formations of the Empire could not be comprehended either by the exponents of the old Aristotelian classification or by those who followed Pufendorf's untheoretical "monstrosity" theory. A higher classification of political bodies was regarded necessary by him.<sup>84</sup> After having already expounded in one of his older works that the Germanic territories and free cities are special states, but that also the whole of Germany forms a single common state,<sup>85</sup> Puetter explained and justified his ideas in the first volume of his *Beytraege*. He arrived at approximately the same results as Ludolph Hugo, although at some points he undoubtedly surpassed his predecessor in farsightedness and precision.

Puetter's advance over Hugo was mainly conditioned by his different approach, which resembled that of Leibniz. He concentrated on the historical process by which several independent states amalgamate into a larger whole. As several originally independent states may unite into a simple unitary state, or may conclude a loose

<sup>81</sup> J. St. Puetter, *Historische Entwicklung der heutigen Staatsverfassung des Deutschen Reichs* (Goettingen, 1786), II, 156-7.

<sup>82</sup> Puetter (1725-1807) was undoubtedly the greatest student and teacher of constitutional and public law in eighteenth-century Germany. Cf. Stintzing, *Geschichte*, III, 331-53; R. v. Mohl, *Die Geschichte und Literatur der Staatswissenschaften* (Erlangen, 1856), II, 425-38.

<sup>83</sup> J. St. Puetter, *Beytraege zum Teutschen Staats-und Fuerstenrecht* (Goettingen, 1777), Beytrag ii, "Von der Regierungsform des Teutschen Reichs und einigen davon abhaengenden Grundsuetzen des Teutschen Staatsrechts," par. 3.

<sup>84</sup> *Ibid.*, par. 1-4; *Historische Entwicklung*, II, 159-60.

<sup>85</sup> *Institutiones juris publici Germanici* (Goettingen, 1770), par. 32: *regnum divisum est in plures respublicas plane diversas quae tamen adhuc unitae sunt in modum reipublicae compositae sub communi supremo imperio monarchico restricto electicio*; as quoted by Brie, *Bundesstaat*, 28, note 17.

union for protection against foreign foes without detriment to their own independence, likewise it must be possible, Puetter thought, that several hitherto independent states may enter into a union in such a way that each state completely retains its own government as far as its internal affairs are concerned, while in external affairs they all acknowledge a higher common authority.<sup>86</sup> A composite state may originate in this way out of several individual states; or this procedure may be reversed, as in the case of the Holy Roman Empire, which sprang from the operation of centrifugal forces. Formerly a unitary state in every regard, the Empire gradually evolved into a federation of individual states, which are permanently united, however, under a common monarchical head.<sup>87</sup>

As a result of theoretical analysis and understanding of the historical formation of the federal state, as well as insight into the contemporary constitution of the Holy Roman Empire, Puetter attributed to the member-states "a government endowed, in the rule and on the whole, with all rights of sovereignty (*Hoheitsrechte*)."<sup>88</sup> On the other hand, he did not deny to the central authority the right to legislate concerning the extent of territorial powers, and he granted it the right to interfere in the internal affairs of the member-states.<sup>89</sup> Such subordination under a higher authority, Puetter believed, is easily compatible with the nature of a state, and he pointed to history as being full of examples of states dependent in various degrees.<sup>90</sup>

Although the Emperor was the bearer of the highest power in the Empire, the territories had the right to participate in the Imperial government.<sup>91</sup> Furthermore, since the princes were not mere officials of the Empire with delegated powers, but true rulers who represented their dominions in the Imperial Diet,<sup>92</sup> Puetter admitted that, in case of Imperial decisions which involved the individual states, the political weight would be on the side of the territories rather than that of the Emperor.<sup>93</sup> This fact caused Puet-

<sup>86</sup> Puetter, *Beytraege*, Beytrag ii, par. 9-14.

<sup>87</sup> *Ibid.*, par. 18-21, 35-40; *Historische Entwicklung*, II, 160-61.

<sup>88</sup> *Beytraege*, Beytrag ii, par. 25.

<sup>89</sup> *Ibid.*, Beytrag xvii, *Bestimmungen der Landeshoheit aus dem gemeinsamen Reichsbande*, and Beytrag xviii, *Bestimmungen der Landeshoheit aus der Subordination unter Kaiser und Reich*. <sup>90</sup> *Ibid.*, Beytrag ii, par. 15-17.

<sup>91</sup> *Ibid.*, Beytrag iii, *Ob und wie weit den Teutschen Reichsstaenden ein Mitregierungsrecht an der kayserlichen Regierung beygelegt werden koenne*.

<sup>92</sup> *Ibid.*, par. 16-18; *Geschichtliche Entwicklung*, II, 162-65.

<sup>93</sup> *Beytraege*, Beytrag iii, par. 19-30.

# INDIVIDUAL CLAIMS TO SOCIAL BENEFITS, I

JANE PERRY CLARK

*Barnard College*

## I. INTRODUCTORY

It is a truism that the response of government to the manifold necessities of modern society has made the state today an organization providing services for the community. In particular, government is regarded as an agency to help alleviate economic disparity and maladjustment. This present development does not mean that the functions of regulation and protection, the traditional concomitants of the police state of the nineteenth century, have ceased to be important. On the contrary, they have increased in magnitude and importance as means of communication and as technical knowledge have increased. Thus the regulation and licensing of the practice of medicine, for example, assume greater importance as medical knowledge increases and as the health problems of the community grow. But the new emphasis of government is indeed on assistance and service<sup>1</sup> to those in need of aid, such as the unemployed, the aged, and the blind.

The new functions of government are in some ways only developments of the old, and the line between regulatory and service developments is not a division between absolutely watertight compartments. In general, a regulatory function is one in which government either directs by regulations of one sort or another the way in which private individuals shall conduct themselves, or else licenses them to carry on certain activities,<sup>2</sup> as found in statutes forbidding industrial homework in certain industries and requiring licenses in others. Service functions, on the other hand, offer definite benefits to individuals, such as unemployment compensation laws providing money payments over a certain period of time to individuals who become unemployed through no fault of their own.

In these service functions, alterations have taken place in the relative interests of the public and the individual because of the new subjects now under governmental control, and also because of

<sup>1</sup> Marshall E. Dimock, *Modern Politics and Administration*, Chap. 2, pp. 57-66, makes a fourfold division of the functions of government—protection, regulation, assistance, and service.

<sup>2</sup> For discussion of the line of demarcation, see colloquy between Sir John Anderson and Mr. W. A. Robson, in Committee on Ministers' Powers, *Minutes of Evidence*, Vol. II, Nos. 1264-1294, pp. 89-91.

the developing relationships between the different branches of the governmental structure. Such subjects as benefits for the aged or minimum wages for women in industry do not lend themselves to embodiment in all their details in the hard and fast terms of statutory enactment. The common law system left too much to private initiative to be able to secure any true equality in the enforcement of social claims.

We are in the midst of the process by which these new services and ways of handling them are being brought into relationship with the traditional system of Anglo-American law and administration. "Nothing less is our task," as Mr. Justice Frankfurter has said,<sup>3</sup> "than fashioning instruments and processes at once adequate for our social needs and the protection of individual freedom." In that task, old instruments of administrative law have been made to serve new uses. The concern of administrative law has been the question of how far the government can go in subordinating the personal and property rights of individuals to the public welfare and what are the processes by which an individual can restrain that subordination. In the service functions of government, the relative positions of public welfare and individual rights have shifted, and the problem becomes that of providing means for securing rights or benefits granted to individuals by statutory enactment, instead of preventing the government from depriving persons of their inherent rights.<sup>4</sup>

In this shifted emphasis, the time-worn administrative safeguards of notice and hearing and right to appeal have assumed new importance. Although mechanical safeguards cannot be relied upon to guarantee individual rights, nevertheless in the development of our liberty, insistence on procedural regularity has been an increasingly important factor.<sup>5</sup> It is of importance therefore to examine some of the ways in which procedural safeguards have grown

<sup>3</sup> *Law and Politics* (1939), "The Task of Administrative Law," p. 234.

<sup>4</sup> Cf., however: "Our traditional administrative law theory is enamoured of the distinction between governmental powers affecting private 'rights' and those conferring 'privileges' or 'bounties.' . . . In examining the internal structure of our administration in the context of procedural safeguards, a distinction between rights and privileges should not be too strongly pressed." L. Jaffe, "Invective and Investigation in Administrative Law," *Harvard Law Rev.*, Vol. 52, p. 1226 (June, 1939). Cf. *Dodge v. Board of Education*, 302 U. S. 74, 79 (1937); *McFarland v. Berber*, 32 App. D.C. 513, 521 (1909); *Penine v. Reis*, 132 U.S. 464, 471 (1889); *People v. Westchester Co. Nat'l Bank*, 231 N.Y. 465, 468, 132 N.E. 241, 243 (1921), quoted Jaffe, *op. cit.*, p. 1224.

<sup>5</sup> Frankfurter, *op. cit.*, p. 235.

and have been adapted in the attempt to guarantee adequate justice to individuals claiming social benefits as of right. It is the purpose of this paper to trace some of the ways in which administrative procedure has come to give such guarantee. It will be seen that considerable formality has developed in the administrative arrangements by which individuals whose claim is denied may present their grievances and obtain redress, and that the administrative branch of government has taken on what were formerly judicial functions in its attempt to secure justice for such claimants. When a claim is originally presented, it must be thoroughly investigated before determination, and then appeal must be allowed to higher authority within the administration. To make assurance doubly sure, still further review is allowed to a still higher administrative body, and last of all there remains the traditional procedure of resort to the courts. Yet the new emphasis is on the administrative process, for it has become apparent that the common law and judicial procedure left too much to private initiative to secure any true equality in the enforcement of social claims.

The procedure is markedly affected by the transitional stage in American thinking concerning welfare and social benefits in which there is a lack of clarity as to what constitutes a right or benefit to which an individual has a claim. To state, as did a newspaper article in December, 1939, that the difference between old-age assistance provided by states and old-age insurance provided by the federal Social Security Act<sup>6</sup> "is that the first is given as a public charity, whereas the second is guaranteed as a right,"<sup>7</sup> is to becloud the issue; for state old age assistance laws, like the federal old age insurance provisions, authorize a statutory claim to benefit and guarantee it by the right to hearing and appeal for claimants deprived of their rights to such assistance. For example, old age pensions in New York State, even if deemed only "inadequate" by the recipient, may be appealed from the public welfare official granting the claim to the state Department of Social Welfare.<sup>8</sup> In old age benefits as in the other types of public assistance services, namely, aid to dependent children and aid to the blind, federal and state social security laws require provision of opportunity for hearing and appeal. The degree of latitude granted to local public welfare

<sup>6</sup> Title II.

<sup>7</sup> R. L. Duffus, "Old Age", *New York Times*, Magazine, Dec. 17, 1939, p. 5.

<sup>8</sup> *Consolidated Laws of New York*, Ch. 42, Art. XIV-A, Sec. 124-d, as required by Social Security Act, Title I, Sec. 2 (a) (4).

officials under such laws indicates the similarity of this type of assistance to general relief to which no legal rights have been granted.

Although the line of demarcation in social thinking is not entirely clear as to why statutory rights to benefit exist in some cases and not in others, nevertheless the fact remains that statutory rights are created in certain types of cases, such as grants to individuals for injuries due to industrial accidents, for involuntary unemployment, for aid to dependent children, the blind, and the aged. Claimants are given the right to benefit not only because of need, but in the broader sense because of the effect of denial of benefit on particular classes of the community. Therefore individual initiative is not the determining factor in securing payment as in the usual proceeding before a court of law. The administrative process itself takes up the burden of attempting to secure to the individual any rights granted him by statute.

The pioneer in evolution of procedure by which a person may claim rights throughout the administrative process is found in workmen's compensation or industrial accident compensation. Following closely in its footsteps is the procedure for unemployment compensation or insurance. Both are based on the principle that industrial accidents in the one case and involuntary loss of employment in the other are part of the costs of industry, to be met by payments made by employers to insurance funds or by payments made from taxes collected for the purpose; both are founded on the idea that a speedy and simple method should be provided by the state for hearing and determining claims rapidly and adjusting the amount of compensation, within limits, to the necessities of the case. In public assistance claims, where social thinking is in a transitional stage, differences have evolved in working out administrative safeguards. In claims for workmen's compensation or unemployment insurance, adversary proceedings are usually involved, while in claims for public assistance, individuals as part of the general public are the chief concern. In workmen's compensation, the claim to benefit is often disputed by an insurance carrier or employer who does not agree that an employee was injured during the course of his employment; in cases of claim to a pension for the aged, for instance, judgment as to eligibility is reached largely as a result of investigation of social and economic facts, and there is no formal opponent save for the administrative officer who may have refused to allow the payment of benefit. Only the general

public is supposedly interested, as in a few states where anyone who has knowledge that old age assistance is being improperly granted may file a written complaint with the Department of Social Welfare. If it appears on investigation that assistance was improperly granted, the state department immediately notifies the public welfare official concerned with the case that no further payments are to be made.<sup>9</sup>

The fact that in claims for benefits of this type there is no adversary other than an intangible one is bound to color the proceedings. Difficulty is inevitably found in any attempt to utilize methods suitable for adversary proceedings in situations in which there is no real opponent.

In accordance with the social purposes of these statutes, all have the common aim of furthering individual claims. Therefore, the presumption is in favor of the claimant, as in New York, where the workmen's compensation law in its own terms requires a liberal interpretation, with a presumption in favor of the injured worker, so that doubts are resolved in his favor,<sup>10</sup> once the facts are established as to the occurrence of an accident.<sup>11</sup> Even so, justice has not been entirely attained, for the usually impecunious and often uninformed employee may suffer some disadvantage when competing against the experience and the financial and frequently organizational superiority of the employer,<sup>12</sup> particularly when it is difficult to prove the *facts* in the case.

## II. INITIAL CLAIMS TO BENEFITS

Traditional administrative-law safeguards such as notice, hearing, possible administrative appeal, and opportunity for judicial review will do little to remedy the difficulties and delays attendant

<sup>9</sup> *Consolidated Laws of New York*, Ch. 42, Sec. 124-f. According to R. Lowe, State Public Welfare Legislation, W.P.A. Division of Research, Research Monograph X (1939), p. 27, less than one quarter of state old age assistance statutes contained such a provision in 1939, while R. Lansdale, E. Long, and B. Hipple, *The Administration of Old Age Assistance* (1938), p. 298, stated that the number was three at the time of writing their volume.

<sup>10</sup> *Consolidated Laws of New York*, Ch. 67, Art. II, Sec. 21.

<sup>11</sup> The Department of Labor must be satisfied that an accident has happened before the presumptions begin to operate. *Colins v. Brooklyn Union Gas Co.*, 171 App. Div. 381 (1916); *Kelly v. Nichols*, 199 App. Div. 870 (1921); *Graffe v. Art Color Printing Co.*, 191 App. Div. 699 (1920); *Woodruff v. Comstock*, 186 App. Div. 924 (1918); *Daly v. U.S. Trucking Co.*, 248 N.Y. Rep. 515 (1928). If substantial evidence to the contrary is produced, the burden of proof shifts to the claimant. *Magna v. Hegeman Harrus Co.*, 252 N.Y. 82 (1932).

<sup>12</sup> R. A. Brown, *The Administration of Workmen's Compensation*, p. 58 (1933).



upon an initial denial of the right of benefit. Therefore the importance of the procedure as well as the basis of the first step in which an individual's claim to social benefits is either granted or denied cannot be overestimated. In fact, as Mr. Justice Frankfurter has said, "the incidence of law is most significant at the lowest point of contact,"<sup>13</sup> and it is apparent that one of the greatest opportunities for arbitrary action by administrative officers arises before the beginning of any "case" and prior to the making of any "decision." Time is of the essence in the type of social situation in which individuals claim that they fall within statutory clauses for benefits, particularly financial ones; for the future of a claimant may be seriously affected by denial of his claim, and indeed the entire purpose of a statute may be defeated by denial at the initial point of contact between the governmental representative and the individual claimant. Furthermore, the atmosphere generated by even temporarily unredressed claims may help defeat the social purpose of an act.

This first step consists generally of investigation, determination of the facts, and tentative decision. Much of the subsequent performance of the administrative task depends on this first step. As far back as 1929, the Moreland Commissioner investigating workmen's compensation in New York realized that many of the delays and unnecessary hearings and a considerable part of the great burden of work now carried on would have been obviated if adequate investigation had been undertaken.<sup>14</sup> The necessity of investigation is perhaps even greater today, as the field for social benefits has increased and as judgments are based more and more on investigation of social and economic facts in their various aspects.

After an investigation is made, an original decision is reached by an administrative official who either grants or denies the claim to benefit. As much of the subsequent discussion is concerned with the questions involved in disputed claims, it is important to remember at this stage of the argument that a large proportion of cases is automatically settled without dispute by a grant of the benefit claimed. It is the individual whose claim is denied, or who thinks that the benefit given him is too small, to whom attention is turned in the machinery provided for appeal. At no stage of the procedure is discretion more important than in the proceeding by which an

<sup>13</sup> *Op. cit.*, p. 35.

<sup>14</sup> *Message to the Governor Transmitting Report*, Legislative Document No. 49, 1929, p. 68.

original determination is made. Questions of fact on which the decision rests are often extremely complex and in many cases call for an increasing degree of specialized social knowledge as well as knowledge of human nature. In some rare cases, such as the standardization of certain injuries in workmen's compensation, it is possible to work out schedules for the determination of disabilities and the compensation to be allowed for them, but this is the exception rather than the rule in dealing with claims for social benefits, which usually involve numerous complicated and often shifting social and economic factors.

In New York, a claim for workmen's compensation may be presented to the employer or to the state industrial commissioner at any time after the expiration of seven days after the accident or onset of occupational disease,<sup>15</sup> while in unemployment compensation, a claim is filed at a local state employment office at which the claimant is registered as unemployed, within the time limit and as prescribed by the industrial commissioner, who also has authority to determine the rules and procedure for ascertaining the validity of the claim and the amount of benefit payable.<sup>16</sup> Despite the presumption in favor of the claimant usual in workmen's compensation cases, the actual burden of establishing each fact is equally on the applicant.<sup>17</sup> In order to obtain an award, the workmen's compensation administration must be convinced that the claimant was an employee, that he was injured as the result of an accident which arose out of, or in the course of, employment, and must also know the nature and extent of his injury and his weekly wage before the accident.<sup>17a</sup>

In New York, previous to July 1, 1939, a strange situation developed in the administration of unemployment compensation in that all claims for benefits were disallowed if there was any doubt as to their validity, so that the enforcement of the law was really left to claimants desirous of securing a hearing and presenting evidence for determination on the merits.<sup>17b</sup> Thus the first step in the pro-

<sup>15</sup> *Consolidated Laws of New York*, Ch. 67, Art. II, Sec. 20.

<sup>16</sup> *Ibid.*, Ch. 31, Art. 18, Sec. 510 (3).

<sup>17</sup> Cf. C. G. Haines, "Judicial Review of Findings and Awards in Industrial Accident Commissions," in *Essays on the Law and Practice of Governmental Administration* (1935), p. 135. Cf. F. A. Ross, "The Applicability of Common-Law Rules of Evidence in Proceedings before Workmen's Compensation Commission," *Harvard Law Review*, Vol. 36, p. 226 (Jan., 1923). <sup>17a</sup> Haines, *op. cit.*, p. 130.

<sup>17b</sup> Procedure, Mar. 10 and 29, 1939, Division of Placement and Unemployment Insurance, N. Y. State Dept. of Labor, Items. 12, 17, 18; Procedure, Feb. 9, 1939.

cedure became comparatively unimportant in disputed claims. The result was that action in withholding benefits was reversed in over seventy per cent of the appealed cases.<sup>18</sup>

In Wisconsin, where all claims are investigated and initially determined on their merits, in the first year of operation of the unemployment compensation law, some 23,000 disputed cases arose; but of these all but 370 were disposed of without a hearing.<sup>19</sup> This apparent success makes the procedure for initial determination in that state of considerable interest.<sup>20</sup> If a claim is filed and the employer's and employee's statements of fact do not agree, a district examiner of the state industrial commission's division of unemployment compensation discusses the situation and tries to make order out of the chaos of the often conflicting stories. He assembles the evidence, makes a brief report, and recommends the disposition of the case; but in the last analysis many cases must be decided on the basis of an examiner's judgment as to the veracity of the persons concerned and the worth of their evidence.<sup>21</sup> His report is subject to review locally by an "adjustments section" of the division, and must be made within ten days after investigation. It is of note that in a large portion of the cases determination is made without dispute or investigation.<sup>22</sup>

When a determination is made, it is essential for the individual affected to be notified of the decision and of the reasons for denial of a claim, as is done under the plan for old age benefit claims: "Notification of denial should include a careful explanation of the reasons therefor. The experience of the state pension department in hearing appeal warrants the view that many appeals can be avoided if the applicant is afforded a clear understanding of the reasons for denial."<sup>23</sup> In many situations, a personal interview has advantages in informing an applicant or beneficiary of all adminis-

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Secs. 810-816.4. Quoted in L. Cloe, "Disputed Claims Procedure under the New York Unemployment Insurance Law," *Columbia Law Review*, Vol. 39, p. 1159 (Nov., 1939). Similar difficulty had previously occurred in the administration of workmen's compensation. Cf. note 11 *supra*. <sup>18</sup> *Ibid*.

<sup>19</sup> *Ibid*. p. 1161, note 46. In some states, the authority to determine claims in the first instance was exercised so as to deprive a claimant of an opportunity for a hearing, as in Louisiana, Vermont, and Virginia, where during the entire year 1938 there was no report of a dissatisfied claimant.

<sup>20</sup> Cf. W. Matschek and R. C. Atkinson, *Administration of Unemployment Compensation Benefits in Wisconsin* (1939). <sup>21</sup> *Ibid.*, p. 47. <sup>22</sup> *Ibid.*, p. 47.

<sup>23</sup> State Pension Department of Wisconsin, Bulletin No. WS-T.-A.D. 11, Apr., 1936.

trative decisions regarding his claims, particularly if the decision has gone against his wishes.<sup>24</sup>

Then he must be informed that all his remedies are by no means exhausted and that he may carry his claim further. For instance, applicants for old age assistance whose claims have been denied or not acted upon within a reasonable time, or whose grant of assistance has been modified or revoked, may appeal for a hearing on the claim. In New York, appeals may be taken in cases where applications have not been acted on by public welfare officials within thirty days after filing the claim, and where the applicants themselves deem the grants inadequate.<sup>25</sup> In Connecticut, any applicant or beneficiary aggrieved by the decision has a right to a hearing.<sup>26</sup>

### III. NOTICE AND HEARING

It has been settled that due process under the Constitution necessitates notice and hearing to a claimant for benefit, but that the requirements of due process are satisfied if the parties have had reasonable notice and reasonable opportunity to be heard and to present either claim or defense, "due regard being had to the nature of the proceeding and the character of the rights which may be affected by it."<sup>27</sup>

Notice and hearing assume a somewhat different guise in the newer administrative procedures from that found in the older situations in which individuals claim such inherent rights as to do business, to secure licenses, or to rent flats in tenements. Where statutory rights to benefits in workmen's compensation, unemployment insurance, or public assistance are claimed, notice and hearing are not safeguards for the retention of pre-existing inherent rights, but are means of preventing discrimination or exploitation of individuals or family groups, of granting opportunities for correcting inept or inefficient administration, and, in particular, of providing the chance for allowing modification of transitional and experimental policies or of developing new ones in fields where administrative officers have been given wide discretion to grant or refuse benefits. On the negative side, such arrangements for notice and hearing may serve to interrupt direct lines of administrative respon-

<sup>24</sup> Lansdale, etc., *op. cit.*, Chap. 9, and p. 306.

<sup>25</sup> *Consolidated Laws of New York*, Ch. 42, Sec. 124-d.

<sup>26</sup> Connecticut, *Public Acts*, 1935, Ch. 110.

<sup>27</sup> *Doheny v. Rogers*, 281 U.S. 369 (1930).

sibility, foster unsympathetic relationships by precipitous reversions of decisions, and operate against the interests of an applicant by acceding to undesirable pressures or requiring of the administrative organization in its daily work of passing on claims action which is unacceptable to it.<sup>28</sup>

Notice of proceedings is important to both parties to a case wherever there is doubt as to the right of the claimant to receive his payment without dispute. Written notice of an injury or death for which compensation is payable under workmen's compensation is essential, so that the employer and the state may know of the case,<sup>29</sup> and so that the employer may have an opportunity to investigate<sup>30</sup> and test the good faith of the applicant.<sup>31</sup> Then it is also essential for both parties to know of a proposed hearing, so that notice must be sent to both,<sup>32</sup> stating the calendar upon which the case is to appear and the purpose of the hearing. Nevertheless, when the hearing does take place, not only in workmen's compensation but also in unemployment insurance, in the discretion of the presiding referee or board member, any issue may be considered and passed upon in any case, though not specifically indicated in the notice, if "the speedy administration of justice without prejudice to any party will thereby be substantially served."<sup>33</sup> It is of note that almost identical wording was adopted in the 1938 regulations of the division of placement and unemployment insurance of the New York State department of labor.<sup>34</sup>

As long as the benefit of the doubt is resolved in favor of a claimant, notice and hearing may sometimes be more important to those opposing his claim, or otherwise affected by it, than to the claimant himself. It is, however, not always easy to determine who such parties may be. Thus the Unemployment Compensation Act of Pennsylvania provides that the state department of labor shall promptly examine claims for unemployment compensation and determine whether or not a claim is valid and thereupon give notice

<sup>28</sup> Cf. *Some Factors to Be Considered in Developing Procedures for Fair Hearing*, mimeographed statement to the field staff of the division of policies and procedures, Bureau of Public Assistance, Social Security Board, Sept. 30, 1936.

<sup>29</sup> *Consolidated Laws of New York*, Ch. 67, Art. II, Sec. 18.

<sup>30</sup> *Prokopiak v. Buffalo Gas Co.*, 176 App. Div. 128 (1916), 95 S.B. 320.

<sup>31</sup> *Hynes v. Pullman Co.*, 223 N.Y. 342 (1918); 95 S.B. 315; *Combes v. Geibel*, 226 N.Y. 291 (1919); 95 S.B. 316; *Smith v. Sirf Ap'ts*, 253 N.Y. Rep. 542 (1930); 185 S.B. 493.

<sup>32</sup> Industrial Board Rules, Rule 7

<sup>33</sup> Industrial Board Rules, Rule 8.

<sup>34</sup> Procedure, Feb. 9, 1939, Rule 4(b).

of the decision and the reasons for it to "the claimant or other affected parties."<sup>35</sup> During the winter of 1939, a referee and the unemployment compensation board of review both agreed that the last employer of a man applying for unemployment compensation was not an affected party, but they were reversed on appeal to the courts.<sup>36</sup> As it seems obvious that at least the last employer is a party affected, the procedure is well accepted, as in Wisconsin, New York, and Pennsylvania, for both employers and employees to receive notice of the award of compensation and to be given a week or ten days to appeal.

#### IV. HEARINGS

Claimants are often so disgruntled with their treatment by administrative officers who refuse to allow their claims that complaint is frequently the order of the day. Protests at the first stage are usually answered in person or in writing; but if an unsatisfactory explanation is offered, claimants may protest again and more formally. It is at this stage that a "fair hearing" comes into the picture.

It is to the fairness of hearing accorded an individual in administrative difficulties that the attention of administrative law has long been turned. Indeed, hearings are frequently the crux of decision as to the determination of social benefits, and therefore have come to be hedged about with administrative and judicial safeguards. Despite their importance, hearings must be emphasized as the second stage in procedure, a fact not always realized by those whose attention is turned to the older forms of administrative law. Hearings have come to be particularly important in those services which are well established, such as workmen's compensation and its procedural follower, unemployment insurance. In the newer and more experimental public assistance procedures, where the emphasis is more directly on social than on mere legal factors, hearings are less formally developed. In fact, in New York, in public assistance cases, "all means of adjustment are exhausted before going into what is designated as a 'fair hearing,' a procedure so successful" that the bureau of public assistance of the New York State depart-

<sup>35</sup> Act of Dec. 5, 1936, P.L. (1937) 2897 (43s. PS secs. 821), Sec. 501.

<sup>36</sup> *Susquehanna Collieries Co. v. Unemployment Compensation Board of Review*, Superior Ct. of Pa., No. 5, Mar. term, 1940; No. 343, Sept. 27, 1939; affirmed by Supreme Court, Mar. 25, 1940.

ment of social welfare was asked to hold only five such hearings in 1938-39<sup>37</sup> and six in 1940.<sup>38</sup> In public assistance generally, "experience has shown that a large proportion of applications for fair hearing are withdrawn by the appellant on the basis of adjustment affected before the hearing."<sup>39</sup>

So important is the right to a hearing that the federal Social Security Board has outlined its requisites to be suggested to states coöperating in the federal Social Security program in regard to public assistance:

"a. The individual whose claim is denied and who requests a hearing must be given due notice of the time and place of hearing with a reasonable time in which to prepare his case.

b. The hearing must be held within a reasonable time after application for it has been made.

c. The individual must be given an opportunity to present his claim in oral or written form, to produce witnesses, and to review the basis of denial of his claim.

(1) Presentation of a claim to the reviewing body by a representative of the state or local agency is not an acceptable substitute for direct presentation by the individual.

(2) . . . If [an individual] wishes to have his claim presented by an attorney he should be permitted to do so. Such service, however, should not be necessary and specific instructions with regard to this possibility may give the applicant the impression that it is expected, and create a feeling of dissatisfaction on the part of the individual who is unable to engage an attorney. The state plan should provide that the use of lawyers is permissible but not necessary and not recommended for the purpose of furthering a claim. . . .

This is also true of admission of witnesses. An appellant should be permitted to produce witnesses who can support his claim. These witnesses may include members of pressure groups who in some instances can give important information with respect to the claim. The routine admission of group testimony may tend to create the impression that pressure and special influence are necessary to receive consideration from the state agency. Under poor leadership, group pressure may tend to obscure the facts on the basis of which decision should be made, prejudice the reviewing body, and weaken rather than support the claim of the appellant. Witnesses can be most effective if their testimony is heard individually.

d. Fair hearing shall be privately conducted and shall be open only to

<sup>37</sup> Letter to the author from the Executive Director, Dec. 12, 1939.

<sup>38</sup> *Ibid.*, Jan. 8, 1941. The Director writes: "I now think there is a distinct coördination between the necessity to hold a hearing and an unusual degree of tenacity and in some cases perhaps a psychotic attitude toward all actions by the welfare officials. This is shown in the fact that in three out of these six cases the clients, even after the decisions had been rendered by the highest authority available to them, have continued, in about the same degree, to argue the matter through correspondence with the same range of officials as formerly."

<sup>39</sup> *Some Factors to be Considered*, *op. cit.*, pp. 3-5.

the claimant, designated representatives of the state agency, and the individuals who have evidence bearing directly on the claim.

e. The decision of the state agency must be based solely on the evidence introduced at the hearing and such other documents as are referred to at the hearing and which the claimant has had an opportunity to inspect.

f. The individual must be fully informed of the basis of the denial of his claim . . .

g. The decision of the reviewing body shall be a final authority . . .

h. A record shall be kept of proceedings of all fair hearings. Such records shall be considered confidential and neither they nor decisions shall be published. . . .

i. The hearing shall take place at a time and under circumstances that shall not cause undue expense, inconvenience, or embarrassment to the claimants. The general conduct of the hearing procedure shall not be such as to place a claimant at a disadvantage. . . .<sup>40</sup>

Not only does the federal Social Security Board suggest procedures for a fair hearing, but they are required by the specific terms of the Social Security Act for all states coöperating in the public assistance program.<sup>41</sup> No grants of money are to be made to states for development of their public assistance programs unless opportunity is given for a fair hearing before the state agency administering the federal grant, while in the case of federal grants to the states for the administration of unemployment compensation under the same act, the state law must include opportunity for a fair hearing "before an impartial tribunal"<sup>42</sup> for all whose claims for unemployment compensation are denied. Also, if the Social Security Board, after reasonable notice and hearing to the state agency charged with the administration of one of these particular social services under a federal grant, finds that in a substantial number of cases benefits have been denied qualified applicants, the Board may refuse to make any further payments until satisfied that the situation has been remedied.<sup>43</sup>

Despite these federal requirements and suggestions, the fair hearing procedure is perhaps one of the least standardized areas of administration in the field of public assistance. In workmen's compensation and unemployment insurance, the legal forms and procedures are clearer and more definite.

Yet the courts have been at some pains to decide what constitute

<sup>40</sup> *Ibid.*, *op. cit.*, pp. 3-5.

<sup>41</sup> Title I, Secs. 2(a) (4); Title IV, Sec. 402(a) (4); Title X, Sec. 1002(a) (40).

<sup>42</sup> *Ibid.*, Title III, Sec. 303(a) (3).

<sup>43</sup> Title I, Sec. 4(a); Title IV, Sec. 404 (2); Title X, Sec. 1004 (2); Title III, Sec. 303(b) (1).



the essentials of a hearing. It has long since been held that the due process clause guarantees fairness in hearings, that there must be a finding in accordance with the indisputable character of the evidence, and with the administrative determination supported by the facts.<sup>44</sup> Findings at hearings must be based on substantial evidence, which must be more than "a mere scintilla . . . such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."<sup>45</sup> The evidence must be contained in a written record and must be known to the parties affected, with full opportunity to meet it.<sup>46</sup> Statutes frequently exempt officials from the limitations of the courts in the acceptance of hearsay evidence,<sup>47</sup> though the dangers of its use are so great that the courts have been known to reverse the award of an industrial accident board based purely on hearsay, where there was "substantial evidence opposed to it."<sup>48</sup> There must be a residuum of legal evidence to sustain an award. Usually claimants have some personal knowledge of the facts, in their own case, but often the opponent in a disputed claim has no knowledge of facts other than through hearsay, as for example, when there is a question concerning the reason for leaving employment in an unemployment compensation case.

Officials holding hearings affecting the determination of individual claims are bound by the fundamental rules of justice,<sup>49</sup> but otherwise are expected to follow the procedure best calculated to ascertain the substantial rights of the parties affected. Workmen's compensation was a pioneer in the attempt to give justice to in-

<sup>44</sup> *Interstate Commerce Commission v. Louisville & Nashville Ry. Co.*, 227 U.S. 88, 91 (1913). Cf. H. Stephens, *Administrative Tribunals and the Rules of Evidence* (1933).

<sup>45</sup> *Consolidated Edison Co v. N.L.R.B.*, 83 Law Ed. Ad. Op. No. 4, 31, 140 (1938).

<sup>46</sup> Notes 1 and 3 *supra*; *U.S. v. Abilene & S. Ry. Co.*, 265 U.S. 274, 288 (1924); *Lloyd Sabaudo v. Elting*, 287 U.S. 329, 339 (1932); *West Ohio Gas Co. v. Public Utilities Commission*, 294 U.S. 63, 68, 69 (1935); *Ohio Bell Telephone Co. v. Public Utilities Commission*, 301 U.S. 292, 300-305 (1937); *Morgan v. U.S.*, 304 U.S. 1, 14, 15 (1938); *Fox West Coast Theatres v. Ind. Commission of Ariz.*, 7 Pac. (2d) 582, 584 (Ariz., 1932).

<sup>47</sup> *Waddell George's Creek Coal Co. v. Chisholm*, 161 A. 276 (Md. 1932).

<sup>48</sup> *Carroll v. Knickerbocker Ice Co.*, 218 N.Y. 435, 113 N.E. 507 (1916); *Lalier Construction & Engineering Co. v. Ind. Commission*, 17 Pac. (2nd), 532, 534 (Colo.) (1932); *Lindquist v. Hollor*, 178 App. Div. 317, 164 N.Y. Supp. 906 (3d Dept., 1917); *Anthus v. Rail Joint Co.*, 193 App. Div. 571, 185 N.Y. Supp. 314 (3d Dept., 1920).

<sup>49</sup> *Interstate Commerce Commission v. Louisville & Nashville Ry. Co.* 227 U. S. 88, 91 (1913).

dividual claims by means of an informal hearing. Informality within definite bounds is the keynote of the situation, for after an investigation is made and "on application of either party"<sup>50</sup> in New York State, a hearing is held, the hearing, as described in the words of the law, being not bound by common-law or statutory rules of evidence or technical or formal rules of procedure, but conducted "in such manner as to ascertain the substantial rights of the parties."<sup>51</sup> This means that it must be conducted "in an orderly manner, all witnesses testifying under oath (or by affirmation), and a record of the proceedings shall be made and kept."<sup>52</sup> Similarly, any employee dissatisfied with an initial determination of his claim for unemployment benefits, or anyone else interested in a case, may request a hearing within twenty days after the mailing of a notice of an award of unemployment compensation.<sup>53</sup> The hearing thereupon held by a referee is conducted in much the same way as that in workmen's compensation cases.

In view of the quasi-judicial nature of the proceedings in such cases, it appears somewhat anomalous that a referee conducting a workmen's compensation hearing is directed to see to it that the rights of the parties before him are ascertained. Then, in the case of an unrepresented claimant, the strictly judicial character of the referee's office is lost, for the referee examines the claimant and his witnesses and cross-examines the employer or insurance company's witnesses on the claimants' behalf.<sup>54</sup> In such cases, the referee becomes a combination judicial officer and prosecuting attorney, a situation warranted only by the avowed bias of the law in favor of the claimant.

Considerable leeway is allowed in the type of evidence which may be given in compensation cases. For instance, witnesses are allowed to testify much more freely than in court proceedings. "It is at times amazing to those used to court trials to notice how great a volume of irrelevant testimony is permitted to be introduced into the record."<sup>55</sup> Such hearings, in both workmen's compensation and

<sup>50</sup> *Consolidated Laws of New York*, Ch. 67, Art. II, Sec. 20.

<sup>51</sup> Art. VII, Sec. 118. Cf. Secs. 119, "Subpoenas"; 120, "Fees of Witnesses"; 121, "Depositions"; 122, "Transcripts."

<sup>52</sup> Rule 9. For a full discussion of these hearings, see *Hearings under the New York State Workmen's Compensation Law*, Commission on the Administration of Justice in New York State, Legislative Document No. 50 (u), (1934).

<sup>53</sup> *Consolidated Laws of New York*, Ch. 78, Sec. 530.

<sup>54</sup> Industrial Board Rules, Rule 9. <sup>55</sup> *Hearings, op. cit.*, p. 29.

unemployment insurance, are open to the public, but no report of any hearing containing the names of any parties is available to the public in New York, as disclosures of information obtained from either employers or employees are prohibited by the law of the state.<sup>56</sup>

In public assistance hearings, the keynote is always the possibility for informal adjustment outside of legal proceedings. Thus in New York State, "it is the continuing objective of the department (of social welfare) to secure any mutually satisfactory adjustment . . . therefore the referee will be alert to all possibilities for such adjustment."<sup>57</sup> When the hearing is held, no persons other than those designated by the department are allowed to attend without the approval of the referee, inasmuch as this type of hearing necessitates so much personal and confidential information as to the claimant's financial status. A full record must be taken, and stenographers are required to transcribe their notes in full.

As the time element is all-important in an individual claim to a social benefit, a hearing must be held promptly, no matter what type of case is involved. In workmen's compensation in New York and in old age assistance in Wisconsin, the law<sup>58</sup> provides that hearings must be scheduled within thirty days after a claim has been submitted. Although the time limit is regarded as directory rather than as mandatory, hearings are scheduled promptly. In New York, the first hearing is held, on the average, six weeks from the actual date of an accident.<sup>59</sup> In unemployment compensation in the same state, hearings are usually scheduled within three weeks of the date when a request is made.<sup>60</sup> But hearings are not inevitably held so promptly, and it has been noted that in some states claimants for old age assistance have frequently been required to wait months before their cases are given consideration.<sup>61</sup>

Decisions must also be made promptly after hearings are held. In workmen's compensation cases, decisions are usually reached

<sup>56</sup> *Consolidated Laws of New York*, Ch. 31, Sec. 524.

<sup>57</sup> *Statement of Policy and Method. Fair Hearing*. Bureau of Public Assistance, New York State Department of Social Welfare (typed). Cf. *Social Service Manual*, Chap. 6, "Complaints and Appeals"; Public Assistance Informational Bulletin No. S-19, June 30, 1938.

<sup>58</sup> *Consolidated Laws of New York*, Ch. 67, Art II, Sec. 20; *Laws of Wisconsin*, 1937, Title VII, Ch. 49, Sec. 49, 28.

<sup>59</sup> Letter from Mr. Henry Sayer, deputy executive director, State Insurance Fund, New York, to the president of the New York State Bar Association, Oct. 5, 1939.

<sup>60</sup> Cloe, *op. cit.*, p. 1162.

<sup>61</sup> Lansdale, *op. cit.*, p. 307.

immediately, and in unemployment insurance in New York, decisions must be reached<sup>62</sup> within five days after the conclusion of the hearing. The decision may settle only the particular matter of dispute or may be a complete disposition of the case. In workmen's and unemployment compensation, the decision must be in writing, together with the reasons for reaching the conclusion, and must be sent to the claimant, the industrial commissioner, and any other affected person who appeared at the hearing.<sup>63</sup> In public assistance services, much greater carelessness appears possible, for comparatively few states keep any track of the number of hearings requested or conducted, or the disposition of the cases.<sup>64</sup>

Despite the importance of the right to a fair hearing, it has not been universally accepted as a *sine qua non* of administrative procedure involving claims to benefits. Thus in the administration of old age assistance, where state officials have been convinced that adequate investigations have been made of applications and that decisions have been reached only after careful consideration of all pertinent facts, the officials are apt to believe that there is little that can be gained by a formal hearing. The experience of one state that has placed great emphasis on the right of claimants to a hearing by a state agency illustrates some of the difficulties, where machinery may be used merely to control local situations rather than to rebuild them constructively. "In this state many appeal cases have been instigated by politicians, not without the tacit approval of state officials, to whom rejected applicants have protested and to whom the existence of a state appeal procedure has presented a convenient 'out' when they have been harassed by constituents objecting to decisions of local welfare officials. The state appeal authority ruled against the appellant in over two-thirds of the seven hundred cases on which hearings were conducted in a ten-month period. Were the time and emphasis given to the improvement of local administration, applicants would be less likely to be led to believe that they were entitled to benefits that could not be legally granted."<sup>65</sup>

Despite such objections, even in public assistance cases, hearings have usually proved valuable to the state administration as a way of interpreting new services to claimants and local officials, of clari-

<sup>62</sup> *Consolidated Laws of New York*, Ch. 31, Art. 18, Sec. 530. The time limit is directory only.      <sup>63</sup> *Ibid.*      <sup>64</sup> Lansdale, etc., *op. cit.*, p. 313.

<sup>65</sup> Lansdale, etc., *op. cit.*, p. 305.

fyng procedures and showing the best methods for administering aid, and last of all as a means of enforcing federal and state regulations. Owing to these factors, in Michigan, the state commission in charge of administration of aid to dependent children "has tried to encourage hearings as far as possible and has published a pamphlet explaining the program in full to the clients so that they will have an understanding of what their rights consist."<sup>66</sup>

Claimants' rights find further safeguards when administrative officers have the power to adjourn hearings. When, as in workmen's compensation, a claimant comes to trial unrepresented, bringing nothing with him but the notice of hearing and with no idea of the proof necessary to establish his claim, postponement is an advantage to him. Referees in such cases may use their best judgment as to when and how often to adjourn cases in order to secure all evidence necessary to be fair to all parties in interest.<sup>67</sup> On the other hand, adjournments necessarily may delay decisions and serve as excuses for lack of preparation of necessary material on both sides.<sup>68</sup> If both parties to a case had the requisite knowledge of the evidence necessary to establish or combat a claim, an understanding of the opponent's case, and all necessary documents and witnesses, the case could be more easily disposed of with speed and efficiency. But such preparation is often difficult to secure, particularly when a claimant is ignorant of his rights. Therefore, despite its disadvantages, the possibility of adjournment offers such safeguards that in unemployment compensation, in the same state at least, one postponement is given as a matter of right, and cases where a referee fails to grant a continuance at the request of a claimant have been remanded for further hearing.<sup>69</sup>

*(To be concluded in the October issue)*

<sup>66</sup> Marcia H. Dancey, "Mothers' Pensions and Aid to Dependent Children Program in Michigan," *Social Service Rev.*, Vol. 3, p. 651 (Dec., 1939).

<sup>67</sup> Industrial Board Rules, Rule 9. A case may be adjourned once at request of an employer or insurance carrier to allow appearance of medical witnesses, but not more than three times. Proceedings must be continued before the same referee who began the case until a final determination awarding or denying compensation is made. Art. II, Sec. 20.

<sup>68</sup> Cf. *Hearings, op. cit.*, pp. 33-37, for discussion of the general problem of adjournments in workmen's compensation in New York.

<sup>69</sup> *Consolidated Laws of New York*, Ch. 2, Art. 18; Cloe, *op. cit.*, p. 1172, note 85.

## STATE CONSTITUTIONAL LAW IN 1940-1941<sup>1</sup>

CHARLES AIKIN

*University of California*

The increase in judicial restraint noted a year ago<sup>2</sup> has again been in evidence during the period under review. State courts, in following the lead of the United States Supreme Court, have construed police power liberally and have spoken out in defense of civil rights. Noteworthy, as well, has been the practice of these courts to construe strictly the power of the governor in this period of expanding administrative authority. The tendency of state courts to uphold experimental legislation, in line with the doctrine established by *Nebbia v. New York*<sup>3</sup> rather than founded on liberty of contract and separation of powers precepts, has not been uniform. Federal decisions which recently have been greatly weakened but not expressly overruled still serve as guide-posts for some appellate courts.

### I. GOVERNMENTAL ORGANIZATION AND PROCEDURE

*Separation of Powers.* The Florida supreme court considered the separation of powers doctrine in two interesting cases. In the first, which involved the power of the supreme court to enact rules of civil procedure for the state courts, the majority held that constitutional provisions which vested the legislature with such power merely supplemented the inherent powers of the courts. Yet it was decided that before the supreme court could adopt rules for lower courts, special legislative authorization should be received.<sup>4</sup> In the second case, the court held that although a state board with discretionary power might itself make rules and issue a call for a hearing, a statute conferring on the board's chief supervisor the power to conduct such a hearing was an unconstitutional delegation of legislative power to one not commissioned an officer.<sup>5</sup>

The Illinois prevailing wage law for contractors engaged in public works also ran afoul of the separation of powers doctrine. The majority of a

<sup>1</sup> Howard Jay Graham, research fellow in political science, University of California, and Lawrence O. Erickson, Jr., compiler of "Comparative Provisions of State Constitutions" (under W.P.A. official project 65-1-08-62-unit A 11 [unpublished], sponsored by the School of Jurisprudence, University of California), gave invaluable aid in the preliminary analysis and selection of cases for this article.

<sup>2</sup> This REVIEW, Vol. 34, p. 700.

<sup>3</sup> 291 U.S. 502.

<sup>4</sup> Petition of Florida State Bar Ass'n. for Promulgation of New Florida Rules of Civil Procedure, 199 So. 57 (Fla., Dec., 1940). See also *People ex rel. Lasecki v. Traeger et al.*, 29 N.E. (2d) 519 (Ill., Oct., 1940).

<sup>5</sup> *Florida Dry Cleaning and Laundry Board v. Economy Cash & Carry Cleaners, Inc., et al.*, 197 So. 550 (Fla., Aug., 1940); also *Sanford Mfg. Co. v. Western Mutual Life Ins. Co.*, 294 N.W. 406; (Iowa, Oct., 1940); *Dixie Greyhound Lines Inc. v. Mississippi Public Service Commission et al.*, 200 So. 579 (Miss., Feb., 1941).

divided court decided that the power to render decisions in regard to prevailing wages was a judicial power. Consequently, vesting this power in administrative agencies could not be sustained.<sup>6</sup>

*Voting and Elections.* The fact that a man who received the highest vote for the office of court clerk died prior to election day does not render the election a nullity; rather, the living person who received the highest vote at the election wins.<sup>7</sup> A Louisiana court held that the constitutional and statutory provisions requiring a write-in candidate to register ten days before an election served to prevent a write-in candidate who had not so registered from receiving the office, when the regular candidate died just before the election and she was the only other candidate to receive any votes.<sup>8</sup>

*The Electorate.* Is an absentee ballot law that makes no provision for challenging prospective voters constitutional? The majority of the Kansas supreme court held that there need be no right to challenge. Moreover, to allow a challenge would violate the secrecy of the ballot.<sup>9</sup>

A petition to amend the New York City charter must be signed by at least 50,000 "qualified electors." The Court of Appeals of New York, by a four to three vote, held that the signer must be a registered voter and not merely a person possessing electoral qualifications so defined in the state constitution.<sup>10</sup>

<sup>6</sup> Reid v. Smith, Director of Public Works and Buildings, *et al.*, 30 N.E. (2d) 908 (Ill., Dec., 1940).

<sup>7</sup> State *ex rel* Wolff v. Geurkind *et al.*, 109 P. (2d) 1094 (Mont., Feb., 1941).

<sup>8</sup> State *ex rel*. Glorioso v. Board of Supervisors of Elections for Parish of Jefferson (La. App.), 198 So. 773 (La., Dec., 1940). A statute of Michigan that requires all candidates for public office who have changed their names after January 1, 1933, to submit both names for inclusion on the ballot was challenged as class legislation. The supreme court sustained the provision as one designed to prevent fraud. Jeffers v. Election Commission of Wayne County *et al.*, 293 N.W. 546 (Mich., Aug., 1940).

<sup>9</sup> Burke v. State Board of Canvassers *et al.*, 107 P. (2d) 773 (Kan., Dec., 1940). See last year's article, p. 701.

<sup>10</sup> Phillips *et al.* v. Hubbard, City Clerk *et al.*, 29 N.E. (2d) 969 (N.Y., Oct., 1940). The supreme court of Michigan, when called upon to define the duties of the secretary of state with regard to the filing of initiative petitions, held that these duties were ministerial and not quasi-judicial. Consequently, the secretary could not make an independent investigation into the sufficiency of signatures, although he might "exercise his honest judgment as to the validity of the names upon the face of the petition so as to reject names which are ridiculous and obviously facetious." People *ex rel.* Wright *et al.* v. Kelly, Secretary of State, 293 N.W. 865 (Mich., Sept., 1940). The Wisconsin constitution empowers the legislature to vest county boards with legislative powers of a local character. Thus the supreme court declared an act invalid that authorized the people of a county to petition the county board for the enactment of a civil service ordinance or, failing this, for the board to refer the ordinance to the people at the ensuing election. This was held invalid as constituting prohibited delegation of power to the electorate. Marshall v. Dane

*Legislature: Salaries.* The Washington legislature appropriated \$40,000 to meet the actual and necessary expenses which members incurred "while absent from their usual places of residence in the service of the state, at a rate not exceeding five dollars per day, to be evidenced by vouchers with the necessary receipts showing such expenditures." The auditor declined to issue warrants as provided by this measure, insisting that the constitutional limitation on legislative salaries could not be circumvented by this kind of disguise, and cited *State ex rel. Banker, State Representative v. Clausen, State Auditor*,<sup>11</sup> to support his decision. In an original action before the supreme court, the validity of the appropriation was sustained. The *Banker* case, decided in 1927, had involved a resolution of the state house of representatives and had authorized the payment of five dollars to members of that house for each day of the session, irrespective of expenses actually incurred. The present law, on the other hand, was a formal legislative act and merely required reimbursement for actual expenses on the presentation of vouchers and receipts. Thus the Washington legislators received remuneration for their living expenses in addition to their salaries without receiving an unconstitutional change in pay.<sup>12</sup>

*Legislature: Defective Title of an Act.* In 1937 Washington, in its design to include Filipinos in the restriction against ownership of real estate, adopted an amendment to its Alien Land Law of 1921. The amending act broadened the term "alien" to include all non-citizens ineligible to citizenship by naturalization. The inclusion of non-citizen nationals—obviously not aliens—within the term "alien" led the Washington supreme court to hold that the title of the act was not broad enough to apply to Filipinos, that "the title of the amendatory law by adopting a term defined in the earlier statute without giving any indication that its meaning has been changed and broadened by statutory definition, actually . . . tends to be misleading and deceptive."<sup>13</sup>

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County Board of Supervisors, 294 N.W. 496 (Wis., Nov., 1940). A Nebraska statute of 1939 that imposed obligation upon the sponsors of initiative petition in addition to constitutional obligations was sustained in *State ex rel. Winter et al. v. Swanson, Secretary of State*, 294 N.W. 200 (Neb., Oct., 1940). On the validity of initiative petition, see *Sturdy v. Hall, Secretary of State*, 143 S.W. (2d) 547 (Ark., Oct., 1940), and *In re Initiative Petition #176, State question #253*, 102 P. (2d) 609 (Okla., May, 1940). <sup>11</sup> 253 P. 805; 142 Wash. 450.

<sup>12</sup> *State ex rel. Todd et al. v. Yelle, State Auditor*, 110 P. (2d) 162 (Wash., Feb., 1941).

<sup>13</sup> *De Cano et al. v. State et al.*, 110 P. (2d) 627 (Wash., Feb., 1941). Errors in the title of an act may not be validated by reference to extraneous material. *State ex rel. Bates v. Baumhauer et al.*, 195 So. 869 (Ala., May, 1940). The restriction limiting an act to one subject does not limit the act to one provision concerning that subject. *Noble v. Noble*, 103 P. (2d) 293 (Ore., June, 1940). Constitutional requirements with reference to legislative titles do not apply to city ordinances.



*Governor.* State courts have shown a tendency to construe strictly the constitutional limitation on the power of the governor. The power of the governor of Virginia to veto items in an appropriation bill was analyzed and interpreted narrowly in the case of the seven vetoes.<sup>14</sup> Each portion of the bill vetoed called for the expenditure of money. The court, however, determined that the vetoes were not of items, but rather were of provisions. The court declared the term "item" to "refer to something which may be taken out of a bill without affecting its other purposes or provisions."

The Oklahoma legislature vested a power in the governor which, if sustained, would have greatly increased his control of state government. The power was one to veto or reduce items in appropriation bills if it appeared subsequent to enactment that revenues would fail to meet original expectations. The Oklahoma supreme court held that this delegation of power amounted to an unconstitutional attempt on the part of the legislature to enlarge the governor's constitutional veto power. Moreover, the framers had not contemplated that the governor's veto power should be exercised long after adjournment, and the intention of the framers must prevail.<sup>15</sup>

The Republican candidate for governor in Missouri apparently had been elected, but by a very narrow margin, when the hostile legislature instructed the speaker not to open the election returns, hoping thereby to prevent a declaration of election. The supreme court held that the work of the speaker was purely ministerial and his duty under the constitution clear. Thus he was subject to mandamus in an action brought by the Republican candidate, and he could be compelled to open and publish the election returns.<sup>16</sup>

*Judiciary.* Many state constitutions contain provisions requiring the

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Chicago Cosmetic Co. *et al.* v. City of Chicago *et al.*, 29 N.E. (2d) 495 (Ill., Oct. 1940).

<sup>14</sup> Commonwealth v. Dodson, Clerk of House of Delegates, 11 S.E. (2d) 120 (Va., Oct., 1940).

<sup>15</sup> State *ex rel.* Crable *et al.* v. Carter, State Auditor, 103 P. (2d) 518 (Okla., June, 1940). Where the legislature increases the duties of the secretary of state without increasing his compensation, the governor may not add to the secretary's compensation by drawing on his executive employment fund where the constitution forbids changing of salary during the term of office. Jackson v. Hodges, Comptroller, 10 S.E. (2d) 566 (Va., Sept., 1940).

According to the Maryland supreme court, the power of appointment is not an inherent power of the governor; rather, it is normally a power of the electorate. Buckholtz v. Hill *et al.*, 13 A. (2d) 348 (Md., May, 1940). See also People *ex rel.* v. Downen, 108 P. (2d) 224 (Colo., Dec., 1940); State *ex rel.* Williams v. Cage, Judge, 199 So. 209 (La., Dec., 1940).

<sup>16</sup> State *ex rel.* Donnell v. Osburn, Speaker of House of Representatives, 147 S.W. (2d) 1065 (Mo., Feb., 1941)

maintenance of a "thorough and efficient system of public schools"<sup>17</sup> or "free and efficient schools."<sup>18</sup> Efforts of educational authorities and associations to induce the courts to become the final interpreters of such provisions, thereby striking down or circumventing statutory or charter limitations on the school tax rates, met with failure in Illinois and Minnesota. Both courts, in decisions less than a week apart, declared that these matters were to be left to legislative or popular determination.<sup>19</sup>

Applications for unemployment benefits by members of the Machinists Union who were not on strike, but who refused to pass a picket line, were allowed by the California Employment Commission under an act that contained no provision for judicial review of the Commission's orders. In defense to a mandamus proceeding to set aside this order, the Commission contended that its decisions were final, not alone as to facts and law, but on matters of statutory interpretation as well. The state supreme court declared that if the Unemployment Insurance Act was intended to vest in the Commission final authority to pass upon questions of law, it would be unconstitutional. However, the fact that the statute made no direct authorization of judicial review was held not significant, for the court's power to settle questions of law is constitutional in its origin, and is a power that the legislature may not curtail.<sup>20</sup>

*Suit Against the State.* The extension of sovereign immunity to a government corporation performing essentially business functions is out of line with the current tendency toward public liability. When the New York Port Authority was sued for damage to property caused by blasting for the

<sup>17</sup> Minn. Const. Art. 8, sec. 3.

<sup>18</sup> Ill. Const. Art. 8, sec. 1.

<sup>19</sup> *People ex rel. Hartman, Co. Coll. v. Term B. Ass'n of St. Louis*, 30 N.E. (2d) 743 (Ill., Dec., 1940); *Bd. of Educ'n of Minn. v. Erickson, Co. Aud.*, 295 N.W. 302 (Minn., Dec., 1940). On legislative power to limit judicial functions, see *Denver Local Union #13 of International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America et al. v. Perry Truck Lines, Inc. et al.*, 101 P. (2d) 436 (Colo., Mar., 1940).

<sup>20</sup> *Bodinson Mfg. Co. v. California Employment Commission et al.*, 109 P. (2d) 935 (Cal., Feb., 1941). See also *In re Determination of Relative Rights to Use of Waters of Deschutes River*, 108 P. (2d) 276 (Ore., Dec., 1940); *Sergi v. Industrial Commission of Ohio*, 27 N.E. (2d) 149 (Ohio, Mar., 1940); *Phipps v. Boise Street Car Co.*, 107 P. (2d) 148 (Ida., Oct., 1940); in *O'Brien et al., Prison Director, v. Olson, Governor*, (Cal. App.) 109 P. (2d) 8 (Cal., Jan., 1941) the supreme court permitted a review of the action of the governor in removing the state board of prison directors by the writ of *certiorari*—a writ limited, in that state, to reviewing action of constitutional courts. On administrative hearing, see *Dierssen v. Civil Service Commission of City and County of San Francisco* (Cal. App.) 110 P. (2d) 513 (Cal., Feb., 1941), and *In re Atchison, Topeka & Santa Fe Railway Company's Protest of Rates*, 107 P. (2d) 123 (N.M., Oct., 1940). The Kentucky supreme court of appeals held that the state probation statute was not unconstitutional in face of the contention that it gave the judiciary an executive power of pardon. *Lovelace v. Commonwealth*, 147 S.W. (2d) 1029 (Ky., Feb., 1941).

Mid-town tunnel, tort liability was made to turn on whether or not the Authority was to be treated as a public utility. The New Jersey court held that the Authority is "a direct state agency, exercising an essential governmental function, and is, therefore, an alter ego of the state" and "clothed with sovereign immunity."<sup>21</sup>

When a state is not liable to an action in negligence, does insurance to protect the agents of the state from liability for negligence amount to a gift of public money? In answering this question in the negative, a California district court of appeal held that insuring public servants against tort claims is a legitimate expenditure of state funds, for by so doing a better class of persons could be attracted to state service.<sup>22</sup>

*Inter-Governmental Relations.* The adequacy of the judiciary as arbiter of the federal system is open to question with the recent growth of a real but extra-constitutional domination of a portion of a state's concurrent and exclusive power by federal administrators. This inadequacy is emphasized by the scarcity of litigation touching this matter. In but one significant case, that of *Hutchins et al. v. Mayo*, Commissioner of Agriculture, *et al.*, was the matter even obliquely brought before a high court. Petitioners in that case sought to restrain the enforcement of certain orders of the Florida Citrus Commission regarding the grading, stamping, or certifying of citrus fruit. Upon one ground the petitioners prevailed. The Commission, instead of adopting its own classification, "adopted rules of a federal bureau fixing standards whether then extant or later revised." It was this adoption of federal rules for future application that gave the court a sufficient basis for invalidation.<sup>23</sup>

The right of the residents of the National Home for Disabled Soldiers

<sup>21</sup> *Miller et al. v. Port of New York Authority et al.*, 15 A. (2d) 262 (N.J., Nov., 1939).

<sup>22</sup> *People v. Standard Accident Insurance Co. et al.* (Cal. App.), 108 P. (2d) 923 (Cal., Jan., 1941). A provision of the New York constitution permitted the issuance of local bonds for the period of usefulness of some object or purpose. The court of appeals defined the word "purpose" broadly enough to cover two-year bonds issued by a city to fund judgments against it. *Cherry v. City of Long Beach et al.*, 26 N.E. (2d) 945 (N.Y., April, 1940). A borough may not avoid constitutional liability for damage due to the construction of streets where the borough stood aside and permitted the county to perform the construction work. *Hughes et ux. v. Borough of Elizabeth* (Pa. Super.) 17 A (2d) 914 (Pa., Jan., 1941). Temporary inconvenience to property owners in the use of their property caused by municipal improvement in question involved the blocking of access to property for eight months. *Thompson et al. v. City of Mobile et al.*, 199 So. 862 (Ala., Jan., 1941).

Under a statute of Ohio that imposed on municipal corporations the duty of keeping public streets open, in repair, and free from nuisances, a city could not be held liable for injury caused by the location of a private United States mail box if it could be shown that the box was located by authority of the United States. *Black v. City of Berea*, 32 N.E. (2d) 1 (Ohio, Feb., 1941).

<sup>23</sup> 197 So. 495 (Fla., Aug., 1940).

at Leavenworth to vote in Kansas elections was examined by the state supreme court. The court reiterated the accepted doctrine that municipal law not inconsistent with federal law remains in force after cession of territory to the United States. In answer to the question whether the right to vote could be classified as a municipal right, the court held that it could not, for the right to vote was declared to be a political right and thus distinct from municipal rights.<sup>24</sup>

A Tennessee supreme court holding that the obligation of contracts doctrine would not bind a state to fulfill its agreement to assist local subdivisions in carrying previously incurred debts was founded on the lack of privity between the state and the local units.<sup>25</sup> From this decision it is but one step to the case of *State v. Marin Municipal Water District*, which held that a municipal water district that had secured a franchise from a county to place water-mains under a county road did not thereby obtain any contractual rights against the state, in spite of the franchise, when the state subsequently took the road into its highway system.<sup>26</sup> A contract entered into by two Utah municipalities—the one to supply culinary water for both cities and the other similarly to supply water for irrigation purposes—was held to be binding. The failure of one municipality to perform when performance became inconvenient rendered it liable to contempt proceedings.<sup>27</sup>

In spite of the provision of the Arizona constitution that supreme and superior court judges were not eligible for any office or public employment other than a judicial office during their terms a superior court judge became a candidate for nomination to the United States Senate. The Arizona supreme court held that this provision could not affect the qualifications of candidates for election to Congress at either the primary or the general election, because such qualifications were primarily federal matters.<sup>28</sup>

*Defense.* Although few in number, some noteworthy cases have arisen

<sup>24</sup> *Herken v. Glynn*, 101 P. (2d) 946 (Kan., May, 1940). Sales and business taxes apply to Indian reservations unless the federal government has reserved against them. *Neah Bay Fish Co. v. Krummel et al.*, 101 P. (2d) 600 (Wash., April, 1940). The extension of a city's limits by a state legislative act to include a portion of an Indian reservation was held lawful. *Anderson v. Brule County et al.*, 292 N.W. 429 (S.D., June, 1940). The determination by a state of its marine boundary is conclusive when accepted by Congress. *Skiriotes v. State*, 197 So. 736 (Fla., Sept., 1940). Affirmed by the United States Supreme Court, April 28, 1941, to be reported in 312 *U. S. Reports*.

<sup>25</sup> *Cunningham et al. v. Broadbeth et al.*, 147 S.W. 408 (Tenn., Feb., 1941).

<sup>26</sup> (Cal. App.) 101 P. (2d) 1112 (Cal., April, 1940).

<sup>27</sup> *Genola Town et al. v. Santaquin City et al.*, 110 P. (2d) 372 (Utah, Feb., 1941). The property right of a local district in a mental hospital it had constructed was not sufficient to prevent the state from assuming ownership and control of it. *Chester County Institution District et al. v. Commonwealth et al.*, 17 A. (2d) 212 (Pa., Jan., 1941). <sup>28</sup> *Stockton v. McFarland et al.*, 106 P. (2d) 328 (Ariz., Oct., 1940).

out of the defense crisis. The Maine legislature was upheld in its power to authorize a \$2,000,000 bond issue "for the purpose of suppressing insurrection, repelling invasion, or for purposes of war, especially for the building and improvement of armories . . . [and] airports for military purposes. . . ." The court, in an advisory opinion rendered at the governor's request, found that: "There being nothing to the contrary in the enacting part of the statute . . . and it being unambiguous,<sup>29</sup> the law raises a presumption that the legislature determined the existence of those facts necessary to sustain the validity of the statute. . . ."<sup>30</sup>

The clerk of a Kentucky court was also a captain in the Kentucky National Guard when the President of the United States ordered his unit into active United States service for one year. The Kentucky court of appeals was called upon to decide whether or not the clerk thus became a "person holding or exercising an office of trust or profit under the United States," and thereby ineligible, under the state constitution, to continue in his capacity as a state officer. The court emphasized that the fact that he was not sworn into the army did not change his status, and that, therefore, he remained a member of the state militia and did not become a federal officer.<sup>31</sup>

## II. RIGHTS OF INDIVIDUALS

*Freedom of Speech.* The Wisconsin Employment Peace Act of 1937 declared it an unfair labor practice for employees to engage in picketing "or other overt concomitants of a strike" unless a majority of the em-

<sup>29</sup> Twice in the brief enacting clause appears "and/or."

<sup>30</sup> *In re Opinion of the Justices*, 15 A. (2d) 33 (Me., July, 1940); see *George Wash. Law Rev.*, Vol. 9, pp. 367-70 (Jan., 1941). The city of Denver sought to condemn certain lands lying outside the city for donation to the United States government for use as an air corps school and bombing field, lands that had been selected by the Secretary of War. The owner of a portion of the property in question acted to prevent the taking and donation on the ground that "power to condemn private property . . . for the public use of the United States" was lacking because it was exclusively for a federal purpose. Nevertheless the court upheld the right of Denver, under the home rule amendment to the state constitution, to spend its money in any way that benefited the city. *Fishel v. City and County of Denver*, 108 P. (2d) 236 (Colo., Dec., 1940). See also *Geboski v. Montana Armory Board et al.*, 103 P. (2d) 679 (Mont., June, 1940).

<sup>31</sup> *Kennedy et al. v. Cook*, 146 S.W. (2d) 56 (Ky., Dec., 1940). A similar case arose in Virginia, except that the question of eligibility was based on a statute rather than on the constitution. The outcome was the same. *City of Lynchburg v. Suttentfield*, 13 S.E. (2d) 323 (La., Feb., 1941). The supreme judicial court of Massachusetts held that there was nothing in the common law, the Massachusetts constitution, nor the United States Constitution to prevent a superior court judge from serving on a draft board. *In re Opinion of the Justices*, 29 N.E. (2d) 738 (Mass., Oct., 1940). Constitutional provisions limiting indebtedness and the loan of public credit will not be interpreted to hamper national defense. *Miles et al. v. Lee et al.*, 143 S.W. (2d) 843 (Ky., Oct., 1940).

ployees had voted to strike by secret ballot. The state supreme court sustained the act, maintaining on the one hand that it was not a criminal statute and on the other that neither on its face nor through its administration by the Wisconsin Employment Relations Board did it impair legitimate freedom of speech. "By engaging in an unauthorized strike an employee loses his status as an employee. He then has the same rights and is subject to the same liabilities as a third person. When he thus withdraws from his employment he is free to speak, but his right to coerce his former employer is limited by the act. Except as his acts affect the employer, he is under no restraint."<sup>32</sup>

*Freedom of Press.* The established doctrine that the state cannot adopt any form of previous restraint on printed publications was affirmed by the Maryland court of appeals. However, in this case the Public Service Commission was sustained in its refusal to compel a telegraph company to continue a ticker service to a sport sheet after evidence of gambling had been uncovered. The court held that no act of the state had denied the newspaper the privilege of expressing its opinion on any subject, and that the ticker service was merely an adjunct to gambling operations, and constitutional freedom of the press thus not involved.<sup>33</sup>

An Atlantic City ordinance imposed a 25-cent license fee upon newspaper vendors, the license to be issued at the discretion of the director of public safety. The contention of the city that the ordinance could not be challenged successfully on the basis of recent United States Supreme Court decisions because the control here was of the "sale," not of a gratuitous distribution nor a distribution in hope of a contribution, while novel, was held by the New Jersey supreme court to be without substance.<sup>34</sup>

*Religion.* The sect of Jehovah's Witnesses again tested the breadth of constitutional religious toleration. The New Hampshire supreme court refused to interpret the guarantee of religious liberty so as to allow mem-

<sup>32</sup> *Hotel & Restaurant Employees' International Alliance, Local #122, et al. v. Wisconsin Employment Relations Board et al.*, 294 N.W. 632 (Wis., Nov., 1940). See also *Shively v. Garage Employees Local Union #44 et al.*, 108 P. (2d) 354 (Wash., Dec., 1940). Cf. *Book Tower Garage Inc. v. Local #415, International Union, United Automobile Workers of America et al.*, 295 N.W. 320 (Mich., Dec., 1940), and *San Angelo v. Amalgamated Meat Cutters & Butchers Workmen of North America, Local 103 (Civil Appeals)*, 139 S. W. (2d) 843 (Tex., April, 1940).

<sup>33</sup> *Howard Sports Daily, Inc., v. Weller, Chairman, Public Service Commission, et al.*, 18 A. (2d) 210 (Md., Feb., 1941).

<sup>34</sup> *Herder v. Shabodi et al.*, 14 A. (2d) 475 (N.J., July, 1940). It was held by the Illinois supreme court that a license could not be required for the sale of books if the books were of a religious character. *Village of South Holland v. Stein*, 26 N.E. (2d) 868 (Ill., April, 1940). On the ground that the distribution of literature to motorists at busy intersections was a menace to motoring, federal decisions were distinguished in a Florida case sustaining an ordinance forbidding such distribution. *Stephens et al. v. Stickel et al.*, 200 So. 396 (Fla., Mar., 1941).

bers of that sect to conduct a Saturday night "information march," a sort of snake dance, for the purpose of religious propaganda without first obtaining a license as required by law.<sup>35</sup> New Jersey's supreme court did not depart from precedent in holding that the Witnesses might solicit contributions without first obtaining a license from township authorities.<sup>36</sup> Although the case turned on another issue, a lower Pennsylvania court took occasion to declare in clear language that no valid doctrine of religious freedom could allow men to invade forcibly people's homes in order to spread their religious doctrines.<sup>37</sup>

*Imprisonment for Debt.* The conservator of a mentally incompetent person invested funds unwisely and without court approval. He handed over to the court all of his property and was cited for contempt when this sum proved insufficient to satisfy his obligation. He contended that he could not be jailed because of his inability to pay a mere debt. The court held that as the court order did not create a debt, the conservator could be imprisoned for contempt.<sup>38</sup>

*Right of the Accused.* The conviction of a defendant for murder where the trial was conducted by hullabaloo rather than by orderly processes of the law, where the family of the deceased hired a special prosecutor from a neighboring state to insure a verdict of hanging, and where the defendant was not allowed to challenge the qualifications of the special prosecutor, was reversed by the state supreme court.<sup>39</sup>

*Counsel.* Decision of the United States Supreme Court in *Powell v. Alabama*<sup>40</sup> that federal due process embraces the right to effective counsel continues to serve as a foundation for the defense of indigent persons accused of crime. Thus it was held that the right of the accused to counsel would not be presumed to have been waived, but that the record must show that the accused, aware of his rights, refused the aid of a lawyer.<sup>41</sup> Also, that in a criminal case where a jury is to be recharged, the absence of the defendant's counsel is reversible error if the lawyer is easily available.<sup>42</sup> But, on the other hand, the court of appeals of Georgia held that

<sup>35</sup> *State v. Cox*, and four other cases, 16 A. (2d) 508 (N.H., June, 1940).

<sup>36</sup> *Tucker v. Randall et al.*, 15 A. (2d) 324 (N.J., July, 1940).

<sup>37</sup> *Commonwealth v. Palms* (Superior Court), 15 A. (2d) 481 (Pa., Oct., 1940).

<sup>38</sup> *Cox v. Rice*, 31 N.E. (2d) 786 (Ill., Feb., 1941). *Lavender v. City of Tuscaloosa*, 198 So. 459 (Ala., Oct., 1940) held that imprisonment for failure to pay the city scavenger money due him for performance of a service mandatorily required by a city ordinance did not violate the constitutional prohibition against imprisonment for debt. A liability, sanctioned by a jail sentence, imposed by law on the father of an illegitimate child does not violate the South Dakota constitutional prohibition of imprisonment for debt. *Acker v. Adamson, Sheriff, et al.*, 293 N.W. 83 (S.D., June, 1940). <sup>39</sup> *State v. Henry*, 198 So. 910 (La., Nov., 1940).

<sup>40</sup> 287 U. S. 45 (1932).

<sup>41</sup> *Ex parte Meadows* (Okla. Crim.), 106 P. (2d) 139 (Okla., Oct., 1940). Cf. *Ex parte Connor*, 108 P. (2d) 10 (Cal., Dec., 1940).

<sup>42</sup> *Carter v. State*, 9 S.E. (2d) 747 (Ga., June, 1940).

sentence may be passed upon a defendant who has pleaded guilty in the absence of his lawyer, who was trying a case in another room in the same building.<sup>43</sup>

Counsel appointed by an Indiana court to defend a pauper was awarded compensation for this service from the county, although there was no statute authorizing such a payment. The supreme court held that it was an inherent power of the court to award fees in such a case and that the county may not avoid the payment.<sup>44</sup>

*Jury.* By statute, New Jersey undertook to transform certain offenses against election laws into disorderly conduct subject to summary punishment—offenses which formerly had been crimes punishable only after indictment and conviction by a jury. The supreme court held this statute unconstitutional. Election frauds are indictable at common law, and elections are themselves of the essence of popular government. Thus the old system of prosecutions must be maintained.<sup>45</sup>

A Negro was convicted of murder in Alabama after indictment by a grand jury composed of white persons. Following his conviction, he sought to gain a new trial by impeaching the grand jury. This effort failed. The supreme court held that as the accused remained silent at the first trial, he waived his right to impeach the grand jury and thereby receive a second trial.<sup>46</sup>

*Search and Seizure.* The high courts of two states held that evidence obtained by a search and seizure could not be admitted in a criminal prosecution unless the warrant under which the search was conducted had been issued strictly in accordance with the law.<sup>47</sup> An opposite position was taken by a Pennsylvania court. In a decision rendered early this year,<sup>48</sup> the court held that the admissibility of evidence was not affected by the mode of obtaining it.

<sup>43</sup> *Welch v. State* (Ga. App.), 11 S.E. (2d) 42 (Ga., Sept., 1940). The reopening of a criminal case in absence of the accused merely for the technical appointment of counsel who had actually served during the trial violated no substantial right of the accused. *People v. DeLisle*, 29 N.E. (2d) 600 (Ill., Oct., 1940). The California court held that mere youth and inexperience of assigned counsel were not in themselves sufficient grounds for reversing a murder conviction for want of due process. *People v. Ives et al.*, 110 P. (2d) 408 (Cal., Feb., 1941).

<sup>44</sup> *Knox County Council v. State ex rel. McCormick*, 29 N.E. (2d) 405 (Ind., Oct., 1940).

<sup>45</sup> *Wilentz, Attorney General v. Galvin et al.*, 15 A. (2d) 903 (N.J., Oct., 1940).

<sup>46</sup> *Vernon v. State*, 200 So. 560 (Ala., Feb., 1941).

<sup>47</sup> *Eslick v. State* (Crim. App.), 105 P. (2d) 554 (Okla., Sept., 1940); *Mazer v. State*, 18 A. (2d) 217 (Md., Feb., 1941). The fact that a defendant takes the stand in his own defense does not operate to make admissible evidence which had been seized under a faulty search warrant where proper objection had been previously made. *Riley v. State*, 18 A. (2d) 583 (Md., Mar., 1941). Cf. *Mazer v. State*, 18 A. (2d) 217 (Md., Feb., 1941).

<sup>48</sup> *Commonwealth v. Dugan et al.* (Pa. Super.) 18 A. (2d) 84 (Pa., Jan., 1941).



The supreme court of Utah decided that a statute authorizing the issuance of a search warrant to aid the enforcement of a private civil right is unconstitutional. In so holding, the court declared that an essentially criminal procedure may not be used for the attainment of private ends.<sup>49</sup>

*Self-Incrimination.* A Michigan statute modifying the immunity against self-incrimination was sustained by a divided court.<sup>50</sup> The question, Can one be compelled to testify against oneself where all possible risk of prosecution as a result of the testimony has been ended, was answered in the affirmative. There must be protection, not only against state prosecution, "but also against any reasonably probable federal prosecution." One of the contentions vainly pressed by the defendant in this case was that while the statute may have granted him immunity from prosecution, he was, in being unable to assert his privilege and go to court and clear himself of criminal charges, deprived of a fundamental right.

The driver of an automobile involved in an accident was compelled by officers to subject himself to certain tests<sup>51</sup> to determine whether or not he was intoxicated. In a prosecution growing out of the accident, the court refused to allow the introduction of the results of these tests in evidence, on the ground that to do so would amount to compelling the accused to incriminate himself.<sup>52</sup>

*Double Jeopardy.* After commencing an action in assault and battery against an individual, the state of Idaho may abandon that action and try the man for murder without placing him in double jeopardy, if the person assaulted dies after the former prosecution has begun.<sup>53</sup> However, one who has been acquitted as an accessory to arson may not later be charged with burning to defraud, a charge growing out of the same incident, unless the evidence necessary to convict in the second prosecution was not admissible in the first.<sup>54</sup>

### III. GOVERNMENT AND BUSINESS

*Fair Trade and Unfair Business Practices.* Coördinated strategy and the constant pressure exerted by interest groups have continued to make the field of trade regulation one of the most dynamic in state constitutional

<sup>49</sup> *Allen v. Trueman*, Judge of the 2nd Judicial District, 110 P. (2d) 355 (Utah, Feb., 1941). <sup>50</sup> *In re Watson*, 291 N.W. 652 (Mich., Apr., 1940).

<sup>51</sup> "He was . . . required to walk and make sudden turns. Again, he was required to hold out his hand and make an effort to place a finger on his nose. . . . Again, he was required to furnish a specimen of urine, in order that it might be analyzed for the purpose of determining whether alcohol was present."

<sup>52</sup> *Apodaca v. State* (Tex. Crim.), 146 S.W. (2d) 381 (Tex., Jan., 1941). There is no violation of the privilege against self-incrimination in compelling one who has been illegally arrested to appear in a police line-up for identification purposes. *Meriwether v. State* (Ga. App.), 11 S.E. (2d) 816 (Ga., Nov., 1940).

<sup>53</sup> *State v. Randolph*, 102 P. (2d) 913 (Ida., May, 1940).

<sup>54</sup> *King v. State*, 199 So. 38 (Fla., Dec., 1940).

law. Outstanding during the past year have been a decision of the Maryland court of appeals extending applicability of the state fair trade law to copyrighted books;<sup>55</sup> a break in the unanimity of decisions invalidating those laws which have prohibited sales below cost, regardless of purpose, effect, or intent;<sup>56</sup> and a tendency to sustain fair trade legislation of other types if sufficiently definite and flexible in its determinations of costs, either by survey or otherwise.<sup>57</sup>

Price-fixing has lost much of its sinister reputation in recent years. Thus a unanimous Vermont court upheld the city of Burlington's flat twenty-five cent intra-city taxi rate.<sup>58</sup> The Pennsylvania Pawnbroker's Act, which fixed maximum charges for storage, insurance, and investigation and granted discretionary licensing powers to the secretary of banking, was ruled to be neither arbitrary nor confiscatory, and was declared to involve no unlawful delegation of authority to the secretary of banking.<sup>59</sup> A New York supreme court sanctioned<sup>60</sup> substantial reenactment of the 1922 theater ticket brokerage law invalidated in *Tyson v. Banton*.<sup>61</sup>

<sup>55</sup> *Schill v. Remington Putnam Book Co.*, 17 A. (2d) 175 (Md., Jan., 1941).

<sup>56</sup> *State v. Walgreen Drug Co., P. H. Tr. & Ind. Serv.* ¶ 97, 170. Cf. *Commonwealth v. Zasloff*, 13 A. (2d) 67 (Pa., May, 1940). See 1940 survey, p. 715, note 65. Prohibitions on sales below cost regardless of intent were among the reinforcement measures enacted in response to pressure from trade associations after the United States Supreme Court had sustained the original fair trade laws in *Old Dearborn Distributing Co. v. Seagram Distillers Corp.*, 299 U. S. 183 (1936).

<sup>57</sup> *McElhane v. Geror*, 292 N.W. 414 (Minn., May, 1940); *State v. Sears*, 103 P. (2d) 337 (Wash., June, 1940); *Carroll v. Schwartz et al.* 14 A. (2d) 754 (Conn., July, 1940); *Miles Laboratories Inc. v. Owl Drug Co.*, 295 N.W. 292 (S.D., Dec., 1940); *Weco Products Co. v. Sam's Cut Rate, Inc., et al.*, 295 N.W. 611 (Mich., Jan., 1941); *Moore v. Northern Kentucky Independent Food Dealers Ass'n et al.*, 149 S.W. (2d) 755 (Ky., Mar., 1941). Qualifications and counter-trends must be noted here, however, for margins of safety are often narrow. The Washington law was upheld by a five to four court, while in the *Zasloff* Case (note 56 above) the Pennsylvania judges, though earlier in their opinion implying that an intent clause would have saved the act, went on to declare that "a penal statute must lay down a reasonably ascertainable standard of guilt," and served notice that all legislative definitions of costs would be closely scrutinized and invalidated if found to be indefinite. Following this line, and notwithstanding an intent clause, the Maryland court proceeded to overturn the Unfair Sales Act of 1939. *Daniel Loughran Co., Inc., et al. v. Lord Baltimore Candy & Tobacco Co., Inc., et al.*, 12 A. (2d) 201 (Md., April, 1940). The court in the Walgreen case (note 56 above), though sustaining the act as a whole, voided one clause relating to costs as "indefinite and uncertain."

<sup>58</sup> *State v. Gamelin*, 13 A. (2d) 204 (Vt., May, 1940).

<sup>59</sup> *Equitable Loan Society, Inc., et al. v. Bell, Secretary of Banking et al.*, 14 A. (2d) 316 (Pa., June, 1940). The court here classed pawnbrokerage with lotteries, liquor, disorderly houses, drug and oleomargarine traffic, and declared that it not only might be regulated, but also might be wholly suppressed. Three judges dissented on this point.

<sup>60</sup> *Kelly-Sullivan, Inc., et al. v. Moss, Commissioner of Licenses of City of New York, et al.*, 22 N.Y.S. (2d) 491 (N.Y., Sept., 1940).

<sup>61</sup> 273 U.S. 418 (1927).

Judicial reserve, however, by no means amounts to complete acquiescence. South Carolina's supreme court, relying heavily on the Fairmont Creamery decision,<sup>62</sup> invalidated a thirteen-year-old statute forbidding locality price discriminations.<sup>63</sup> Efforts of Massachusetts retailers to bolster the Motor Fuel Sales Act by prohibiting gifts of premiums, rebates, and prizes, and by requiring that posted prices be maintained for not less than twenty-four hours, were defeated by the supreme judicial court's refusal to depart from its earlier holding that prohibition of trading stamps constituted an arbitrary interference with private business.<sup>64</sup> Thus the confusion that is resulting from barbers' efforts to stabilize price charges is typical of the general confusion of price stabilization. Although the supreme court of New Mexico sustained a statute empowering the Board of Barber Examiners to approve minimum price scales adopted by 75 per cent of the barbers in any judicial district,<sup>65</sup> and the Oklahoma criminal court of appeals affirmed a similar earlier holding,<sup>66</sup> the weight of authority remains against the constitutionality of such legislation.<sup>67</sup> During the past year, courts of Indiana and Wisconsin unanimously held statutes of this type to involve an unconstitutional delegation of legislative power.<sup>68</sup>

*Milk Control.* Milk control legislation suffered significant and unexpected reverses during the past year when acts of Connecticut and Michigan were both overturned. The 1935 law of Connecticut provided for an administrator and authorized him to set minimum prices and regulate the milk industry generally. In invalidating this act, the court relied heavily on a New Hampshire decision<sup>69</sup> and argued that the price-fixing sections of the Connecticut law were much more indefinite than in states where such statutes had been sustained.<sup>70</sup> Michigan's statute was successfully defended against claims of unlawful delegation of legislative power, defective title, and inadequate procedural safeguards. But the supreme court held the act to be void inasmuch as it required two members of the board to be milk producers. Answering the majority's contention that this pro-

<sup>62</sup> 274 U.S. 1 (1927).

<sup>63</sup> *State v. Standard Oil Co. of New Jersey*, 10 S.E. (2d) 778 (S.C., Sept., 1940).

<sup>64</sup> *Sperry & Hutchinson Co. et al. v. McBride*, Director of Division of Necessaries of Life of the Commonwealth, 30 N.E. (2d) 269 (Mass., Nov., 1940).

<sup>65</sup> *Arnold v. Board of Barber Examiners et al.*, 109 P. (2d) 779 (N.M., Jan., 1941).

<sup>66</sup> *Tennyson v. State*, 106 P. (2d) 1114 (Okla., Oct., 1940).

<sup>67</sup> Fellman, David, "A Case Study in Administrative Law: The Regulation of Barbers," *Wash. Univ. Law Quar.*, Vol. 26, pp. 213-42 (Feb., 1941).

<sup>68</sup> *Hollingsworth v. State Board of Barber Examiners*, 28 N.E. (2d) 64 (Ind., June, 1940); *State v. Neveau*, 294 N.W. 796 (Wis., Nov., 1940). Exemption of counties of less than 30,000 population from the provisions of the act was also held a fatal defect in the latter case.

<sup>69</sup> *Ferretti v. Jackson*, 188 A. 474 (1936).

<sup>70</sup> *State v. Stoddard* 13 A. (2d) 586 (Conn., May, 1940).

vision gave the producer members a pecuniary interest in price-fixing, and hence made a fair and impartial attitude impossible as applied to distributors and consumers,<sup>71</sup> the dissenting justice pointed out that "administrative bodies generally are composed of members of businesses or professions . . . regulated." Such membership, he continued, is almost inevitable under a "policy of entrusting regulation to those best equipped through knowledge and experience for the task."<sup>72</sup>

*Housing.* The general status of housing legislation was indicated by the supreme court of Arizona in declaring that at least 20 states had sustained housing laws and that "every question raised here has been considered in [other] jurisdictions and held invulnerable to . . . constitutional objections." Thereupon the court overruled arguments that the 1939 municipal housing law was invalid as special legislation and inoperative as to home rule cities.<sup>73</sup>

Although the Virginia housing law was sustained as a valid exercise of the police power and the housing authority's bonds were held properly tax exempt, the court held an agreement between Bristol and the Bristol Housing Authority to be void because certain matters essential to public safety were deemed to have been withdrawn from city control.<sup>74</sup>

Perhaps the most interesting and closely contested issue growing out of decisions of the Florida supreme court related to whether or not the property of housing authorities was used exclusively for municipal purposes.<sup>75</sup> The court first answered this question in the negative, two judges dissenting,<sup>76</sup> then subsequently modified,<sup>77</sup> and finally reversed its decision,

<sup>71</sup> Distributors and consumers were each allowed but one board member.

<sup>72</sup> *Johnson v. Michigan Milk Marketing Board*, 295 N.W. 346 (Mich., Dec., 1940).

<sup>73</sup> *Humphrey v. City of Phoenix et al.*, 102 P. (2d) 82 (Ariz., May, 1940). See the similar holding in *Texas Housing Authority of City of Dallas et al. v. Higginbotham et al.*, 143 S.W. (2d) 79 (Tex., June, 1940).

<sup>74</sup> *Mumpower v. Housing Authority of the City of Bristol et al.*, 11 S.E. (2d) 732 (Va., Nov., 1940). The New Jersey supreme court saw little merit in the argument that whereas its earlier decisions had held *slum clearance* to be a public use, the Newark housing project was really for families of *low income*. *Ryan et al. v. Housing Authority of City of Newark et al.*, 15 A. (2d) 647 (N.J., Oct., 1940). Opponents of low-cost housing for Negroes received a double setback when a divided Florida court rejected arguments which in effect denied municipalities use of the public corporation and made housing exclusively a county function. *Lott et al. v. City of Orlando et al.*, 196 So. 313 (Fla., June, 1940), and *Higbee et al. v. Housing Authority of Jacksonville et al.*, 197 So. 479 (Fla., Aug., 1940).

<sup>75</sup> Florida's constitution (XVI, 16), like that of a number of other states, provides that "the property of all corporations shall be subject to taxation unless . . . held and used exclusively for . . . municipal . . . or charitable purposes."

<sup>76</sup> *State ex rel. Burbidge et al. v. St. John, Tax Assessor*, 197 S. 131 (Fla., June, 1940).

<sup>77</sup> (Same case), 197 S. 549 (Fla., Aug., 1940).

holding that inasmuch as the state police power is undergoing rapid expansion, and "municipal purpose" is no longer restricted to enterprises that are strictly governmental, the legislature's decision on this point should be accepted as final.<sup>78</sup>

*Labor, Employment, and Relief.* Workmen's compensation, employment agency and wage regulation, and relief supplied four cases worthy of note. Thirty years after the Ives decision,<sup>79</sup> and on the weight of the arguments in that much criticized case, the West Virginia supreme court of appeals voided a compensation law which imposed liability on employers without fault.<sup>80</sup> A decision which emphasized the vagaries of substantive due process and caused the United States Supreme Court expressly to overrule *Ribnik v. McBride*<sup>81</sup> was the Nebraska court's holding that a statute limiting the fees of private employment agencies violated federal but not state due process.<sup>82</sup> A unanimous Michigan court sustained a statute which required wage parity between the sexes for equal work done under equal conditions.<sup>83</sup> And finally the Oklahoma Unemployment Compensation Act, which stipulated that small units employing less than eight employees might be grouped together to make the act applicable if the units were owned by the same interest, was upheld by the state's high court.<sup>84</sup>

*Fiscal Powers.* Self-imposed judicial restraint failed to prevent high courts from interfering with state fiscal policy. The Minnesota supreme court successively invalidated a franchise tax unconstitutionally imposed on railroad income,<sup>85</sup> a chain store tax for a second time,<sup>86</sup> and an attempt

<sup>78</sup> *State ex rel. Harper v. McDavid, Tax Assessor et al.*, 200 So. 100 (Fla., Feb., 1941). Compare *State v. City of Tallahassee*, 195 So. 402 (Fla., Mar., 1940), wherein the erection of an office building for rental to state, county, and federal governments was held a municipal purpose, and *Brown v. Winton et al.*, 197 So. 543 (Fla., July, 1940), wherein the erection of a cold storage plant for rental purposes was held a municipal purpose. Cf. *Hogue v. Housing Authority of Little Rock et al.*, 144 S.W. (2d) 49 (Ark., Nov., 1940).

<sup>79</sup> *Ives v. South Buffalo R. Co.*, 94 N.E. 431 (N.Y., 1911).

<sup>80</sup> *Prager v. W. H. Chapman & Sons Co.*, 9 S.E. (2d) 880 (W. Va., July, 1940).

<sup>81</sup> 277 U.S. 350 (1928).

<sup>82</sup> *State ex rel. Western Reference & Bond Assn., Inc., v. Kinney, Secretary of Labor*, 293 N.W. 393 (Neb., Aug., 1940); reversed in *Olsen, Secretary of Labor of Nebraska, v. Nebraska*, 85 L. ed. 820 (April, 1941).

<sup>83</sup> *General Motors Corporation v. Read, Atty. Gen., et al.*, 293 N.W. 751 (Mich., Sept., 1940).

<sup>84</sup> *Gibson Products Co. v. Murphy*, 100 P. (2d) 453 (Okla., May, 1940). The Illinois Pauper Act imposed a three-year local residence requirement as a condition for poor relief. This act was sustained in spite of the fact that faulty pleadings prevent a clear-cut statement of the law. *People ex rel. Heydenreich et al. v. Lyons*, 30 N.E. (2d) 46 (Ill., Dec., 1940). See note, *Univ. of Chicago Law Rev.*, Vol. 8, p. 544 (April, 1941).

<sup>85</sup> *State v. Duluth, Missabe and Northern Railroad Co.*, 292 N.W. 401 (Minn., Dec., 1939. Reargument denied April, 1940). For judicial construction of the right

to divert the state gasoline tax,<sup>87</sup> Wisconsin's superior court judges unanimously agreed that a \$50,000 state appropriation to defray the "usual and necessary expenses attendant upon . . . obtaining and holding" the 1941 American Legion Convention in Milwaukee constituted a forbidden loan of the state's credit and an unconstitutional delegation of legislative power to the national officers of the Legion;<sup>88</sup> and finally, Washington supreme court decisions<sup>89</sup> which ignored severability clauses and invalidated as a whole certain fuel-oil taxes which had exempted locally-refined oils prompted critics to argue<sup>90</sup> that "the attitude and reasoning of the court . . . applied to the gasoline, cigarette, and sales tax statutes would result in decisions that each was unconstitutional."

*Local Business Taxes.* Ordinances of Ohio and Missouri municipalities imposing prohibitory license fees upon out-of-town bakeries competing with local bakeries were declared unconstitutional by the courts of those states.<sup>91</sup> A tax imposed upon non-resident automobile operators by the town of Jackson was voided by the Kentucky court of appeals.<sup>92</sup> The same court nullified a two per cent gross premium tax levied by Louisville upon

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of Maryland to tax the Baltimore & Ohio Railroad, see *Levin et al. v. Baltimore & Ohio Railroad Co.*, 17 A (2d) 101 (Md., Jan., 1941).

<sup>86</sup> *National Tea Co. et al. v. State*, 294 N.W. 230 (Minn., Sept., 1940). See note, *Yale Law Jour.*, Vol. 49, p. 1463 (June, 1940).

<sup>87</sup> *Cory v. King, Auditor, et al.*, 296 N.W. 506 (Minn., Feb., 1941). For an interesting conflict that developed in South Carolina over gas fund diversion, see *State ex rel. Edwards v. Osborne et al.*, 7 S.E. (2d) 526 (S.C., Feb., 1940), and *State ex rel. Edwards v. Osborne*, 11 S.E. (2d) 260 (S.C., Oct., 1940).

<sup>88</sup> *State ex rel. American Legion 1941 Convention Corporation of Milwaukee v. Smith, State Treasurer*, 293 N.W. 161 (Wis., June, 1940). Confronted with much the same problem of defining the permissible limits of the taxing power used for purposes of state advertising, the Michigan supreme court sustained a one-cent-per-bushel or two-cents-per-hundredweight tax on the privilege of marketing Michigan-grown apples, the resulting revenue being used for purposes of sales stimulation. *Miller et al. v. Michigan State Apple Commission et al.*, 296 N.W. 245 (Mich., Feb., 1941).

<sup>89</sup> *State v. Inland Empire Refineries, Inc. (Montana Headlight Oil Co. et al., Interveners)*, 101 P. (2d) 975 (Wash., April, 1940). *Great Northern Railway Co. v. Cohn, Acting Director of Licenses, et al.*, 101 P. (2d) 985 (Wash., April, 1940). See also *City of Seattle v. Rogers*, 106 P. (2d) 598 (Wash., Oct., 1940), wherein the supreme court invalidated a Seattle ordinance requiring a prohibitory license fee for conducting a charity campaign for profit.

<sup>90</sup> John B. Sholley, "Are the Gasoline, Cigarette, and Sales Taxes Unconstitutional?," *Washington Law Rev.*, Vol. 15, pp. 215-38 (Nov. 1940).

<sup>91</sup> *Nickles v. Echelburger, Mayor*, 31 N.E. (2d) 474 (Ohio App., Mar., 1941); *Fetter v. City of Richmond et al.*, 142 S.W. (2d) 6 (Mo., July, 1940).

<sup>92</sup> *Davis v. Pelfrey*, 147 S.W. (2d) 723 (Ky., Jan., 1941). However, the Paducah tax imposed on both resident and non-resident automobile operators was sustained by the same court. *Johnson v. City of Paducah et al.*, 147 S.W. (2d) 721 (Ky., Jan., 1941).

## AMERICAN GOVERNMENT AND POLITICS

**Campaign Finance in the Presidential Election of 1940.**<sup>1</sup> Important changes in the regulations governing receipts and expenditures of party committees, enacted in the summer of 1940, make a study of the financing of the presidential election of that year particularly interesting and significant. "Hatch Act II," designed primarily to extend to certain state and local employees limitations upon political activities already imposed upon federal office-holders by "Hatch Act I," introduced a number of radical changes in the rules governing the collection of campaign funds.<sup>2</sup>

Section 21 of the act made it illegal for any "political committee" to receive contributions or make expenditures, during any calendar year, aggregating more than \$3,000,000.<sup>3</sup> Section 13 limited to \$5,000, in any calendar year, contributions of persons or associations to any campaign "for nomination or election, to or on behalf of, any candidate for an elective federal office (including the offices of President of the United States and presidential and vice presidential electors)," with the stipulation, however, that such limitations should not apply to contributions to state or local committees. The same section, in sub-section (c), also declared it unlawful for any person or corporation to purchase "goods, commodities, advertising, or articles of any kind or description," where the proceeds of such purchase would benefit the candidates for federal elective office—a provision obviously aimed at the famous convention book which was an important source of revenue to the Democratic National Committee in 1936.<sup>4</sup>

State attempts to meet the problem of the "power of the purse" by imposing flat limitations upon the size of contributions and the total expenditures of candidates or party committees in elections are no novelty,<sup>5</sup> and the amount which candidates for senator and representative in Con-

<sup>1</sup> This study was made possible by a research grant from Wellesley College, which the writer acknowledges with grateful appreciation. She wishes also to take this opportunity to thank officers of the Democratic and Republican national committees, members of the staff of the Gillette Committee, and the clerk of the House of Representatives for the many courtesies extended to her in the preparation of this article.

<sup>2</sup> The first Hatch Act, Public Law No. 252, 76th Congress, was approved August 2, 1939. The second, Public Law No. 753, approved July 19, 1940, was in the form of an amendment to the earlier act. The provisions of these two acts, together with the Federal Corrupt Practices Act of 1925, are published in convenient pamphlet form under the title "Political Activities and Federal Corrupt Practices Acts," as Sen. Doc. No. 264, 76th Cong., 3d Sess.

<sup>3</sup> According to Section 302(c) of the Federal Corrupt Practices Act, a "political committee" is "any committee which accepts contributions or makes expenditures for the purpose of influencing the election of candidates . . . in two or more states. . . ."

<sup>4</sup> The venture netted the committee about \$250,000.

<sup>5</sup> See discussion in the writer's *Money in Elections*, pp. 308-12, 43-48.

gress may spend, except for designated purposes, has been limited since 1911. But the 1940 act marked the first attempt to limit either the amount that an individual might contribute to a national committee or the total expenditures of such an agency. Some idea of how drastic these limitations are becomes apparent when one remembers that John J. Raskob contributed \$110,000 to the Democratic National Committee in 1928, that in 1936 William Randolph Hearst and John D. Rockefeller, Jr., each contributed \$50,000 to the Republican National Committee, that in 1928 Democratic expenditures exceeded \$5,000,000, and that more than \$8,000,000 was expended by the Republicans in 1936. In analyzing the 1940 campaign funds, attention has been focussed upon the effect of the Hatch Act limitations. Are these provisions effective as they stand? Should they be strengthened? Should they be continued as they are? Should they be repealed? These are the questions which have been uppermost in the writer's mind in undertaking this study.

Fortunately for the investigator, the regular reports filed by treasurers of party committees were supplemented by information assembled by a Senate committee and by a special grand jury. Following its usual practice, the Senate appointed a special committee to investigate presidential, vice presidential, and senatorial campaign expenditures.<sup>6</sup> This committee, under the chairmanship of Senator Guy M. Gillette of Iowa, displayed a commendable effort to avoid the political pyrotechnics and partisan tendencies that have characterized some of its predecessors. On the other hand, its members seemed to lack the fundamental interest in problems of campaign finance which characterized the work of such crusaders as James A. Reed, William E. Borah, and Gerald Nye. It limited its investigations rather narrowly to complaints brought by others, and it was obviously handicapped by dissension within its own ranks,<sup>7</sup> and by the fact that its chairman was forced to give a good deal of attention and energy to the "Lend-Lease" bill hearings before the Committee on Foreign Relations just at the time that the report on campaign funds was being prepared.

In its report, the committee proposes no specific legislation, but limits itself to recommending "exploration and study by the United States Senate of remedial legislation" designed to accomplish certain enumerated objectives and suggests that the Senate Committee on Privileges and Elections "make a thorough study of the situation with a view of proposing any amendments to existing law which may be deemed by that committee to be in the public interest."<sup>8</sup> Nevertheless, the information as-

<sup>6</sup> Senate Resolutions 212, 291, and 336, 76th Cong., 3d Sess., and Senate Resolution 59, 77th Cong., 1st Sess.; appointed Feb. 1, 1940.

<sup>7</sup> Note Senator Tobey's "minority views" and "supplemental reports," and Senator Adams' statement.

<sup>8</sup> United States Senate Special Committee to Investigate Presidential, Vice Presidential, and Senatorial Campaign Expenditures, 1940, *Report No. 47* (77th



sembled by an unusually able corps of assistants is an invaluable source of material for anyone wishing to probe into the effects of the Hatch Act. Particularly useful is the compilation of expenditures of state and local committees, which are not required to file reports at Washington; the investigation of the activities of the various Republican finance committees; and the tabulation of contributions by prominent individuals and families.<sup>9</sup> Without this data, the picture of the financing of the campaign would be incomplete indeed.

A different, but equally important service, was rendered by the special investigation conducted by Maurice M. Milligan, special assistant to the Attorney General. Although the special grand jury convened to hear the evidence presented by Mr. Milligan brought in no indictments, the investigations were the basis for sweeping condemnations of the wording of the present law, and specific, constructive proposals for remedial legislation. It is in itself a sign of progress that the Department of Justice should have displayed this interest in the enforcement provisions of the corrupt practices legislation. Mr. Milligan's recommendations will be considered later.

Both parties had ended the campaign of 1936 in debt, the net deficit of the Democratic National Committee being \$445,000, that of the Republicans, \$915,000.<sup>10</sup> During the following three years, both headquarters maintained active organizations and raised substantial sums, as Table I shows. More than one-third of all that the Democrats raised during this period came from Jackson Day dinners and late sales of the famous *Book of the 1936 Convention*. By January 1, 1940, the Democratic deficit had been reduced to \$219,000, some \$120,000 of which represented unpaid loans. In the next two months the party performed the Herculean task of wiping out its indebtedness altogether, largely by that never-failing money-raising device, the Jackson Day dinner.<sup>11</sup> Thus the Democrats began the active campaign with their books balanced. On January 1, 1940, much of the Republican indebtedness was still outstanding. During the next two months, more than \$639,000 was expended to meet unpaid bills of the 1936 campaign.

The limitations of the Hatch Act, imposing a drastic change in rules just as the whistle was blown for the beginning of the presidential contest, caused concern in the rival political camps and necessitated some rapid

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Cong., 1st Sess., Feb. 15, 1941), pp. 79-80. Hereafter this will be cited as *Gillette Committee, Report*.

<sup>9</sup> *Gillette Committee, Report*, pp. 8-9, 117-29, 143-48.

<sup>10</sup> See "Campaign Funds in the Presidential Election of 1936," in this *REVIEW*, Vol. 31 (June, 1937), pp. 496-7.

<sup>11</sup> \$336,000 of the \$412,000 received between Jan. 1 and Feb. 28, 1940, was from Jackson Day dinners.

TABLE I  
RECEIPTS AND DISBURSEMENTS OF NATIONAL COMMITTEES, 1937-39<sup>12</sup>

Year	Democratic		Republican	
	Receipts	Expenditures	Receipts	Expenditures
1937	\$1,294,748	\$1,461,273	\$ 628,047	\$ 632,186
1938	1,041,669	1,039,834	1,572,985	1,578,296
1939	731,116	736,709	1,092,038	737,188

changes in financial plans. The loosely-drawn, ambiguously worded provisions of the law made the task not too difficult.

The Democrats were poor, but solvent, and disposed to make a virtue of necessity. In testifying before the Gillette Committee in September, their treasurer, Oliver A. Quayle, stated that although a strict interpretation of the act might not require it, his party was prepared to limit to \$3,000,000 the aggregate expenditures of all organizations functioning nationally, and that obligations contracted for prior to January 1, 1940, but paid after that date, as well as all other disbursements made during the calendar year but prior to the date of the passage of the Hatch Act, would be included as 1940 expenditures.<sup>13</sup> The one important change in plans which the act forced the Democrats to make concerned the *Book of the Democratic Convention of 1940*. When the act was passed, plans for a book similar to that of 1936 had been completed and advertising to the amount of \$340,000 had been sold on a commission basis, netting the committee about \$170,000. After some grumbling, the plans were abandoned; sale of advertising ceased, and the book was given away instead of being sold, as had been intended.<sup>14</sup>

Certain interpretations of the Hatch Act would have seriously embarrassed the Republicans. As has been pointed out above, the national committee disbursed more than \$639,000 in January and February, 1940, in payment of 1936 campaign bills. C. B. Goodspeed, treasurer of the committee, argued that this amount should not be included as 1940 expenditures.<sup>15</sup> There was also disagreement concerning collections made by the national committee under arrangements with state committees and remitted to them, and sums advanced to the senatorial and congressional campaign committees.<sup>16</sup> Mr. Goodspeed's irritation at an interpretation of the law which would have included these within the \$3,000,000 to which

<sup>12</sup> Data from reports on file in the office of the clerk of the House.

<sup>13</sup> United States Senate, Special Committee Investigating Campaign Expenditures, 1940, *Hearings*, Vol. II, pp. 197 ff. These hearings were not printed, but the writer had access to a mimeographed committee copy. They will be referred to hereafter as Gillette Committee, *Hearings*.

<sup>14</sup> *New York Times*, August 11, 12, 13, 18, 1940.

<sup>15</sup> Gillette Committee, *Hearings*, Vol. II, pp. 188 ff.

<sup>16</sup> *Idem*.

the Republican National Committee was limited was plainly visible when he said to the Gillette Committee: ". . . It cannot be that it was the intention of Congress to make it impossible for a political party to present their candidate and his policies to the public. Otherwise they cannot vote intelligently and we haven't democracy. If everything is taken off us, we will not have as much as Wrigley has got to present his chewing gum to the country."<sup>17</sup>

Immediately after the passage of the Hatch Act, the joint fund-raising agreements between the Republican National Committee and the state organizations were canceled, the fund-raising subcommittees of the national committee were dissolved, and a series of state finance committees were created.<sup>18</sup> Thus what was hardly more than a paper reorganization brought the money-raising agencies within the letter of the act.

Most important of all, from the Republican point of view, was the status of the Associated Willkie Clubs and similar nationally organized independent committees. Representatives of these organizations interpreted the act to permit an expenditure of \$3,000,000 by *each* of these committees.<sup>19</sup> Senator Hatch maintained that it was the intent of Congress to limit to \$3,000,000 the *aggregate* collections and expenditures of all national committees supporting Willkie.<sup>20</sup> From Colorado Springs, Mr. Willkie added to the confusion by announcing that he "did not believe in an expensive campaign," that "the combined total expenses of the Republican party, the Willkie-for-President Clubs, and the independent Democratic movement" would be "under \$3,000,000, the limitation set by the Hatch Act," and that he was in favor of the act.<sup>21</sup> From a study of subsequent tables, it will become evident that the Republican standard-bearer proved a poor prophet.

The expenditures of the two national committees are summarized in Table II. Comparison of these figures with those of other recent campaigns shows a sharp reduction.<sup>22</sup> One must go back to the depression year of

<sup>17</sup> Gillette Committee, *Hearings*, p. 196.      <sup>18</sup> Gillette Committee, *Report*, p. 9.

<sup>19</sup> See the statement of Henry P. Fletcher, general counsel of the Republican National Committee, *New York Times*, August 4, 1940, and testimony of C. B. Goodspeed and Orren Root, Jr., Gillette Committee, *Hearings*, Vol. II, pp. 34 ff. and 188 ff.      <sup>20</sup> Gillette Committee, *Hearings*, Vol. III, p. 315.

<sup>21</sup> *New York Times*, Aug. 4, 1940, p. 1.

<sup>22</sup> The total expenditure of the national committees in recent election years, including bills unpaid and advances to other committees, were as follows:

<i>Year</i>	<i>Democratic</i>	<i>Republican</i>
1928	\$5,342,350	\$6,256,111
1932	2,245,975	2,900,052
1936	5,194,741	8,892,972
1940	2,783,654	3,451,310

TABLE II  
EXPENDITURES OF NATIONAL COMMITTEES,  
JANUARY 1 TO DECEMBER 31, 1940<sup>23</sup>

	<i>Democratic</i>	<i>Republican</i>
Disbursements, Jan. 1 to Dec. 31.....	\$2,438,092 <sup>a</sup>	\$3,451,310
Bills unpaid.....	345,562 <sup>b</sup>	—
Total.....	\$2,783,654	\$3,451,310
1936 campaign debts or loans repaid.....	\$ 149,500	\$ 639,307 <sup>c</sup>
Transfers to state and other committees.....	436,338	569,261 <sup>d</sup>
1940 national committee expenditures.....	2,197,816	2,242,742 <sup>e</sup>
Total.....	\$2,783,654	\$3,451,310

<sup>a</sup> Includes loans repaid, totaling \$149,500. This is the figure used by the Gillette Committee and does not include "contracts in the amount of \$162,674.20, which were assigned to other committees."

<sup>b</sup> Figure as of Aug. 31, 1940, the last figure given. This is exclusive of \$77,500 "borrowed money."

<sup>c</sup> This amount is deducted from the Republican report of Sept. 1, 1940, and omitted from all subsequent reports as "in relation to 1936 campaign."

<sup>d</sup> The Republican report of Jan. 1, 1941, deducts this sum from receipts and expenditures as "received by the Republican National Committee as agent for state committees and remitted back to state committees in accordance with agency contracts entered into prior to the passage of the Hatch Act."

<sup>e</sup> This is the figure used by the Gillette Committee.

1932 to find comparable figures. The combined expenditures of the two committees were less than the \$8,890,000 distributed by the Republicans alone in 1936, and exceeded by only \$1,000,000 the \$5,194,000 which the Democratic National Committee spent in that year. The Democrats clearly kept within the limits of the Hatch Act. Whether or not the Republicans exceeded the limit depends upon how the act is interpreted. If one includes the \$639,000 disbursed in payment of 1936 bills, and the \$569,000 collected by the national committee and returned to the state committees under contracts entered into before the passage of the Hatch Act, the total exceeds \$3,000,000. If either of these amounts is excluded, the total is well within the limit.

As usual, the largest single expenditure of both national committees was for radio broadcasting. The Democrats spent \$387,224, representing 17.6 per cent of their total outlay, and relatively more than the \$582,000 expended in 1936. During the calendar year, the Republican National Committee disbursed about \$570,000 for radio broadcasting, although

<sup>23</sup> Data from reports filed in the office of the clerk of the House.

more than \$200,000 of this was in payment of 1936 bills. The expenditure for radio broadcasting and transcriptions which may properly be charged to the 1940 campaign was about \$335,000, representing fifteen per cent of the expenditures of the national committee during the calendar year 1940. The Democrats spent \$57,569 for transportation, the Republicans \$133,000, representing 2.6 per cent and six per cent of their respective disbursements. The printing bill of the Democratic National Committee was \$158,527, and of their Republican rivals \$184,460, or 7.2 and eight per cent of the two budgets.<sup>23a</sup> The mushroom-like growth of such organizations is evident from the fact that the weekly pay roll of the Democratic National Committee rose from \$3,288 in January to \$18,920 in the last week of October, only to shrink to \$3,617 in December.

If one stopped with the expenditures of the national committees, one would have a very incomplete picture of the financing of this campaign and of the effect of the Hatch Act; the real story appears only when one probes into the expenditures of other organizations. The importance of the various finance committees which the Republicans organized after the passage of the Hatch Act is evident from a study of Table III. Exclusive of funds transferred to the national committee, and accounted for in Table II, these agencies collected more than \$6,600,000. Some of these

<sup>23a</sup> The writer is indebted to Mr. Goodspeed, treasurer of the Republican National Committee, for a copy of the committee's audit of the expenditures from June 29 to December 31, which makes it possible to present the following interesting analysis of the expenditures of that committee during the campaign proper:

Salaries.....	\$	361,986	
Office expenses, including rental, furniture, taxes, supplies.....		108,850	
Publicity			
Radio, including transcriptions.....	\$336,488		
Buttons.....	48,606		
Motion pictures.....	68,453		
Sound trucks.....	47,444		
Photographs and lithographs.....	30,020		
Plate and mat service.....	56,277		
Printing literature.....	103,188		
Newspaper advertising, billboards, and miscellaneous	19,455	709,932	
Travel, including special train, aviation, and expenses of speakers..		259,172	
Telephone, telegraph, express, postage.....		131,392	
Legal and professional.....		29,234	
"Contingent".....		30,428	
Aid to states.....		25,033	
College Republicans.....		5,282	
Special activities.....		1,161	
Entertainment.....		7,264	
Miscellaneous.....		5,500	
Total.....			\$1,675,234



TABLE III  
RECEIPTS AND EXPENDITURES OF IMPORTANT REPUBLICAN  
FINANCE COMMITTEES, 1940<sup>24</sup>

<i>Organization</i>	<i>Receipts</i>	<i>Expenditures</i>
Republican Finance Committee of Northern California	\$ 171,642	\$ 170,401
Republican Finance Committee of Southern California	233,608	223,330
Republican Finance Committee of Connecticut.....	361,667	335,436
Republican Finance Committee of Delaware.....	103,652	104,246
Republican Finance Committee of Illinois.....	742,287	711,841
Kentucky Finance Committee.....	163,785	162,301
Republican Finance Committee of Michigan.....	376,983	338,203
Republican Finance Committee of Missouri.....	454,061	458,284
Republican Finance and Budget Committee of Nebraska.....	88,164	78,322
New Jersey Republican Finance Committee.....	545,811	523,939
United Republican Finance Committee of Metropolitan New York.....	1,989,969	1,609,995
Republican Finance Committee of Ohio.....	446,007	404,025
Republican Finance Committee of Oregon.....	94,115	85,279
Republican Finance Committee of Pennsylvania.....	1,162,645 <sup>a</sup>	1,094,044 <sup>a</sup>
Republican Finance Committee of Tennessee.....	12,395	12,395
Total.....	\$6,946,791	\$6,312,041
Transferred to Republican National Committee.....	328,633	328,633
Net Total.....	\$6,618,158	\$5,983,408

<sup>a</sup> Exclusive of funds held in escrow for counties and handled as receipts for accounting purposes only.

funds were distributed to state and local committees, some were spent directly; but all of them aided the presidential candidate of the Republican party, directly or indirectly. Legislation which permits an unlimited number of such committees to raise and spend \$3,000,000 each leaves a hole as wide as a barn door in the limitation and is farcical.

The end of the story has not yet been reached, as Table IV shows. In every presidential campaign, a certain number of non-party organizations rise to the support of their chosen candidates. In 1928, Hoover received the support of a variety of anti-Smith, dry organizations;<sup>25</sup> and Labor's Non-Partisan League and the Liberty League were among the numerous groups playing an important rôle in the 1936 campaign.<sup>26</sup> In no previous

<sup>24</sup> Figures for New Jersey and Pennsylvania and transfers from finance committees to Republican National Committee from reports filed in the office of the clerk of the House; other data from the Gillette Committee, *Report*, pp. 117-29.

<sup>25</sup> For a description of the activities of these organizations, see the writer's *Money in Elections*, pp. 165-8.

<sup>26</sup> See "Campaign Funds in the Presidential Election of 1936," *op. cit.*

TABLE IV  
EXPENDITURES OF IMPORTANT NON-PARTY ORGANIZATIONS IN 1940<sup>27</sup>

<i>Favoring Democrats</i>	<i>Expenditures</i>
National Committee of Independent Voters for Roosevelt and Wallace.....	\$ 250,455 <sup>a</sup>
National Committee for Agriculture.....	131,489 <sup>b</sup>
Business Men's League for Roosevelt.....	59,973
Young Democracy (Illinois).....	26,394
Young Democratic Clubs of America.....	16,420
Hollywood for Roosevelt Committee.....	12,983
Non-Partisan League of Clothing Workers (New York).....	12,405
Employees for Roosevelt (New York).....	11,962
Democratic State Councils of Americans of Italian Origin.....	11,184
Labor Joint Committee for Roosevelt and Wallace (Ohio).....	10,036
<i>Favoring Republicans</i>	
Associated Willkie Clubs of America.....	\$1,355,604
Democrats for Willkie.....	416,808
National Committee to Uphold Constitutional Government.....	377,381
Citizens Information Committee.....	176,248
Maryland Committee.....	110,223
Willkie War Veterans.....	78,001
People's Committee to Defend Life Insurance and Savings.....	58,871
Jefferson Democrats of California.....	41,440
Pro-America.....	37,950
Willkie Magazine Fund.....	29,537
No-Third-Term Democrats of Illinois.....	23,352
Ohio No-Third-Term Committee.....	20,580
Independent Willkie Advertising Campaign.....	17,937
Women's National Republican Club.....	16,974
Clearing House for National Interests.....	13,580
National Committee of Physicians for Willkie.....	11,712
"We, the People".....	11,414

<sup>a</sup> \$54,100 of this was contributed by trade unions.

<sup>b</sup> \$54,000 of this came from the Democratic National Committee.

campaign in our history, however, have the non-party agencies been as many and as varied as in 1940, and never before have they invested so heavily in a campaign.

The most important organizations aiding the Democratic candidates were the National Committee of Independent Voters for Roosevelt and Wallace (\$250,000) and the National Committee for Agriculture (\$131,489). In testifying before the Gillette Committee in September, Sol Rosenblatt, general counsel of the Democratic National Committee, stated that

<sup>27</sup> Figures from the Gillette Committee, *Report*, pp. 106-29.

although these organizations were independent of the national committee, it was aware of their activities, and that the aggregate expenditures of all three organizations would be kept within the \$3,000,000 limit.<sup>28</sup> If bills unpaid at the end of the year are excluded from the disbursements of the national committee, and the \$54,000 which this organization contributed to the National Committee for Agriculture is subtracted, the aggregate expenditure of the three organizations was \$2,766,036, or well within the limit. If, however, one adds bills contracted for by the national committee but unpaid at the end of the year, the total would exceed the limit by over \$110,000.<sup>29</sup>

From official and unofficial statements of those in command of the Democratic campaign, it is apparent that their early plans called for no large expenditure of funds and that they expected to keep the disbursements of the three national organizations well within the \$3,000,000 limit.<sup>30</sup> Late in the campaign, thrown into a near panic by the rising tide of Willkie votes in the Gallup poll, a number of expensive national radio broadcasts were added to the publicity program. It was apparent that if these were paid for by the Democratic National Committee, aggregate expenditures of the three national organizations would exceed \$3,000,000. Consequently, a few days before the election, radio contracts entered into by the national committee were canceled, and officials of that organization arranged to have various state committees assume these obligations and asked Richard J. Reynolds to lend them the funds necessary to finance the program. As a result of these arrangements, Mr. Reynolds made loans of \$75,000 and \$100,000, respectively, to the New York and New Jersey

<sup>28</sup> Gillette Committee, *Hearings*, Vol. II, pp. 166 ff.

<sup>29</sup> Democratic National Committee.....	\$2,438,092
National Committee of Independent Voters.....	250,455
National Committee for Agriculture.....	131,489
Total expenditures.....	\$2,820,036
Contributions of Democratic National Committee to National Committee for Agriculture.....	54,000
Net Expenditures.....	\$2,766,036
Unpaid bills of Democratic National Committee.....	345,562
Total running expenses.....	\$3,111,598

<sup>30</sup> See Mr. Quayle's statements to the press after the passage of the Hatch Act (*New York Times*, Sept. 12, 1940) and his testimony before the Gillette Committee (*Hearings*, Vol. II, pp. 197 ff.). Similar statements were made to this writer by Mr. Quayle and other members of his staff early in October. The atmosphere of the headquarters of the Democratic National Committee at that time was one of optimism, and the opinion generally expressed was that the election would be carried without a large expenditure of money.



state committees. After the election, he lent an additional \$100,000 to the New York committee. An earlier loan of \$25,000 to the Illinois state committee was said to be for general campaign purposes. Mr. Reynolds' loan to state committees, therefore, totaled \$300,000.<sup>31</sup>

Mr. Quayle's original statement that he, personally, arranged these loans with Mr. Reynolds was denied by Mr. Reynolds, who testified that the arrangements had been made by Wayne Johnson, national director of finance of the Democratic National Committee. In later testimony before the committee, Mr. Quayle admitted that his earlier statement was in error and corroborated Mr. Reynolds' version. Another point in dispute was whether the original contracts between the national committee and the radio companies were canceled before or after the election. Mr. Quayle's report of December 31, 1940, covered the transactions in the following note appended to the statement of disbursements: "Exclusive of obligations represented by contracts in the amount of \$162,674.20 which were assigned to other committees."

Mr. Reynolds is a stockholder in the R. J. Reynolds Tobacco Company and numerous other corporations. He was director of finance for the national committee in North Carolina until his appointment as treasurer of the Democratic committee in January, 1941. His \$100,000 loan to the New Jersey committee represented the bulk of its total receipts of \$133,000.<sup>32</sup> Among the broadcasts paid for by these loans were President Roosevelt's speech the Saturday evening preceding the election, and the speech made by Senator Norris toward the close of the campaign.

The importance of non-party organizations in the financing of the Republican campaign is evident from Table IV above. As the campaign progressed, Mr. Willkie's hope that the combined expenditures of the national committee, the Willkie Clubs, and the Democrats for Willkie might be kept within the \$3,000,000 was cast to the four winds. At the close of the campaign, their aggregate disbursements, exclusive of the national committee's payments on 1936 campaign bills and advances to the states, aggregated over \$4,000,000.<sup>33</sup> In addition to these important nation-wide

<sup>31</sup> Gillette Committee, *Report*, pp. 10-11. See also the testimony of Mr. Quayle, Mr. Reynolds, and Charles D. Quinn, secretary of the New Jersey Democratic Central Committee, Gillette Committee, *Hearings*, Vol. VI, pp. 552-80; Vol. VIII, pp. 687-709; Vol. IX, pp. 752-3; and statement of Senator Tobey, Gillette Committee, *Report*, pp. 81-88, urging the committee to seek to determine whether these transactions constituted a conspiracy to violate the Hatch Act, and to recommend prosecutions to the Department of Justice.

<sup>32</sup> See Gillette Committee, *Report*, p. 124.

<sup>33</sup> Republican National Committee.....	\$2,242,742
Associated Willkie Clubs.....	1,355,604
Democrats for Willkie.....	416,808
Total.....	\$4,015,154

organizations, more than eighty other independent groups had spent money in preaching the Willkie gospel.<sup>34</sup> The more important ones are listed above in Table IV. Some of these operated on a nation-wide scale, others within certain geographic sections, while many confined their activities to a single state or sub-division of a state. All but the National Committee to Uphold Constitutional Government came into being in 1940 and acknowledged that they were political committees.<sup>35</sup> The following list of names gives some idea of the variety of their appeals: "People's Committee to Defend Life Insurance and Savings," "Willkie Magazine Fund," "Willkie War Veterans," "We, the People," "National Committee of Physicians for Willkie," "Writers for Wendell L. Willkie," "Townsend National Voters League," "Stockyard District Willkie Club," "Chicago Business Men's Election Committee," "Minnesota Lawyers 'No Third Term Association' Committee," "Retailers for Willkie," "Clergymen's National Committee for Willkie," "Posters for Subway Platforms," "Lawyers No Third Term," "Labor for Willkie," "Willkie-for-President Club of Akron," "Jeffersonian Democrats of California," "Pro-America," and "Polish-American National Security League." Almost every stratum of society and every interest group was honeycombed by their activities; few remained outside the orbit of their comprehensive money-raising activities.<sup>36</sup>

Information assembled by the Gillette Committee concerning funds raised and expended by state and local committees, as well as those functioning nationally, makes it possible to present a more complete picture of the financing of a presidential campaign than has ever been available before. A summary, presented in Table V, shows a Democratic total slightly below \$6,000,000. The Republicans spent slightly less than \$15,000,000, making a total of close to \$21,000,000. Unquestionably there are some duplications in these figures. Not all transfers of funds have been traced and deducted, although the more important ones were subtracted

<sup>34</sup> See Gillette Committee, *Report*, pp. 106-29. Some of these are listed in Appendix IV, some in Appendix V. The classification is not altogether logical, apparently being based upon whether the organization filed a report with the clerk of the House or with a state or local officer.

<sup>35</sup> According to the testimony of Samuel B. Pettengill, chairman of the National Committee to Uphold Constitutional Government, it was organized in 1937 to oppose the Supreme Court reorganization plan. The leading spirit was Frank Gannett of Rochester. Later, the organization opposed the reorganization of the administrative branch of the government, the Roosevelt "purge" in the 1938 primaries, the Wagner Act, "socialization of medicine," and the third term. In 1940, it claimed that it was not engaged in a campaign for the election of a particular candidate, and hence was not a "political committee" within the definition of the Corrupt Practices Act, but conceded that its anti-third-term activities aided Willkie. Gillette Committee, *Hearings*, Vol. III, pp. 222-56.

<sup>36</sup> In many communities there was literally house-to-house canvassing for funds.

in the Gillette Committee report. One should remember, also, that state committees spent funds on behalf of state and local candidates, as well as those on the national ticket. As the Gillette Committee points out, however, it is fair to assume that a large percentage of the expenditures of these state committees was made in support of the national tickets.<sup>37</sup> It should be remembered, also, that many of the expenditures of various local groups, not here included, aided the national tickets.

The \$21,000,000 total above is not an accurate figure for the expenditures in behalf of Roosevelt and Willkie in 1940. But it is the closest approximation to the total cost of a national campaign which has ever been

TABLE V  
SUMMARY OF EXPENDITURES IN PRESIDENTIAL ELECTION OF 1940<sup>38</sup>

	<i>Democratic</i>	<i>Republican</i>	<i>Total</i>
National committees			
Expended during campaign.....	\$1,852,254	\$2,242,742	
Bills unpaid.....	345,562	—	
Total.....	\$2,197,816	\$ 2,242,742	\$ 4,440,558
Independent national groups <sup>a</sup> .....	557,048	2,832,167	3,389,215
State committees, including finance committees <sup>b</sup> .....	2,785,660	10,791,625	13,577,285
Independent state committees, groups, or individuals....	314,558	754,901	1,069,459
Total.....	\$5,855,082	\$16,621,435	\$22,476,517
Less transfers from finance committees to state committees.....		1,680,293	1,680,293
Net total.....	\$5,855,082	\$14,941,142	\$20,796,224

<sup>a</sup> Including such important non-party organizations as the Associated Willkie Clubs of America and the National Committee of Independent Voters for Roosevelt and Wallace.

<sup>b</sup> Including the United Republican Finance Committee of Metropolitan New York and other similar finance committees.

<sup>37</sup> *Report*, pp. 10 and 11.

<sup>38</sup> Except for the national committees, these figures are taken from the Gillette Committee, *Report*, pp. 10-11, and tables, pp. 106-42. Unquestionably other transfers of funds should be subtracted from both lists, but it is impossible to trace these with accuracy.

made available, and the *relative* expenditures of the two parties deserve careful consideration. It is reasonable to suppose that the figures are as accurate in the case of one party as in that of the other. If this is true, more than twice as much was spent on behalf of the defeated candidate as was expended to re-elect the "third term candidate." Once again the losers were conspicuously more extravagant than the winners. The election of 1940, like the two earlier Roosevelt victories, shows that campaigns cannot be won by money alone.<sup>39</sup>

It is also evident from the above table that if the purpose of the Hatch Act was to limit to \$3,000,000 the *aggregate* expenditures of all political committees supporting the same presidential candidate, it failed miserably. In fact, the act seems to have had no reducing effect whatever. In the one campaign for which we have even approximately comparable records—that of 1928—the combined expenditures of national, state, and independent committees was \$16,500,000.<sup>40</sup> These figures are probably less complete than those for 1940, but with a very liberal allowance for that fact, it seems reasonable to conclude that more, rather than less, was spent in 1940. In 1936, the national committees spent more than they did in 1940, but since figures for the expenditures of other organizations are not available we have no basis for comparison of the total cost of these two campaigns.

The financing of the campaign by the national committees of the two parties (Table VI) is an interesting study in contrasts. Except for \$200,000 received from the Convention Arrangements Committee, the Republican National Committee relied entirely upon cash contributions. The Democrats, however, raised more than \$750,000 from Jackson Day dinners and the *Book of the 1940 Convention*, two money-raising devices which had proved their worth in 1936. In addition, it borrowed \$105,000 in the course of the year. Except for \$10,000 from the Manufacturers Trust Company borrowed early in January, there were no bank loans, and no single loan of more than \$5,000. The total receipts of the national committees were conspicuously less than in 1928 and 1936, but exceeded those of the depression year 1932.<sup>41</sup>

The analysis of contributions presented in Table VII is interesting for

<sup>39</sup> See the writer's "Campaign Funds in a Depression Year," in this REVIEW, Vol. 27 (Oct., 1933), p. 770; and "Campaign Funds in the Presidential Election of 1936," *op. cit.*

<sup>40</sup> See *Money in Elections*, p. 75. The figures are from the report of the Steiwer Committee. The Democratic total was \$7,152,000; the Republican, \$9,433,000.

<sup>41</sup> The figures are as follows:

	<i>Democratic</i>	<i>Republican</i>
1928	\$5,721,381	\$6,610,273
1932	2,378,688	2,649,554
1936	5,206,159	7,761,039

TABLE VI  
RECEIPTS OF THE NATIONAL COMMITTEES, JANUARY 1 TO DECEMBER 31, 1940<sup>42</sup>

	<i>Democrats</i>	<i>Republicans</i>
Cash contributions.....	\$1,339,483	\$2,931,210
Advertising in <i>Book</i> .....	338,069	—
Sale of convention boxes.....	6,000	—
Jackson Day dinners.....	422,582	—
Convention committee.....	125,000	200,000
Loans.....	105,000	—
Miscellaneous.....	115,998	2,657
Total.....	\$2,452,132	\$3,133,867 <sup>a</sup>

<sup>a</sup> In the reports of the treasurer of the Republican National Committee, \$569,260.76, "contributions received as agent for state committees and remitted back to state committees in accordance with agency contracts entered into prior to the passage of the Hatch Act, . . .," is subtracted from this figure.

several reasons. Organized labor, in spite of John L. Lewis' endorsement of Willkie, contributed 6.2 per cent of the funds of the Democratic National Committee, relatively more than in 1936.<sup>43</sup> This does not mean, however, that labor gave Roosevelt more financial support in 1940 than in 1936, or that C.I.O. groups contributed as heavily. Much of the \$770,000 which labor invested in the 1936 campaign was given to such independent organizations as Labor's Non-Partisan League, which were inactive in 1940. The only independent organization which received substantial financial support from labor in 1940 was the National Committee of Independent Voters for Roosevelt. More than \$50,000 of the total receipts of this organization came from various trade union groups.<sup>44</sup> As the Gillette Committee made no special study of the rôle of the trade unions in 1940, it is impossible to tell how much they may have contributed to state and local committees.

The most generous trade union contributions to the National Committee of Independent Voters came from the International Ladies Garment Workers and the Amalgamated Clothing Workers, both of which gave generously in 1936. The United Mine Workers of America is conspicuously absent from the list of contributors, although one Tennessee local did make a \$100 gift late in October. The Democratic National Committee received most of its financial support from local unions of brewery work-

<sup>42</sup> Data from the reports filed in the office of the clerk of the House.

<sup>43</sup> In 1936, labor contributed 5.1 per cent of the funds of the Democratic National Committee.

<sup>44</sup> See Table IV above. Labor's Non-Partisan League was inactive in 1940; it raised no funds and spent only \$2,000.

ers, teamsters, and the railway brotherhoods, with some representation from groups in the building trades. The amounts were usually small—\$100 or \$200—and contributions of \$1,000 or more were the exception. There is no evidence that the United Mine Workers, or any other labor group, contributed to the Republican National Committee or any of the national Willkie organizations.

TABLE VII  
DISTRIBUTION BY SIZE OF CONTRIBUTIONS TO NATIONAL  
COMMITTEES, JANUARY 1 TO DECEMBER 31, 1940<sup>45</sup>

Group	Democrats			Republicans		
	No. of Contributors	Amount Contributed by Group	Per Cent Contributed by Group	No. of Contributors	Amount Contributed by Group	Per Cent Contributed by Group
\$5,000 and over	35	\$ 175,000	13.1	22	\$ 111,000	3.8
1,000-4,999	158	262,536	19.6	712	1,123,127	38.3
100- 999	1,380	232,287	17.3	4,288	900,272	30.7
Less than \$100	36,265	312,124	23.3	34,108	391,318	13.4
Impossible to allocate						
Labor	113	82,841	6.2	—	—	—
Other	47	274,695	20.5	39	405,494	13.8
Total	37,998	\$1,339,483	100.0	39,169	\$2,931,211	100.0

The relative importance of large and small contributors is also apparent from Table VII. Contributions of less than \$100 made up 23.3 per cent of the Democratic fund, but only 13.4 per cent of the Republican fund was given in these small amounts. The small contributor has played an increasingly important rôle in the financing of the Democratic National Committee since 1928.<sup>46</sup> When one considers that in 1940 an additional six per cent of the party's contributions came from trade union groups, and that the receipts from Jackson Day dinners represent small, rather than large, contributions, one has convincing evidence that the Democratic party has returned to its Jeffersonian tradition and is once again

<sup>45</sup> This table includes *cash contributions* only. In the case of the Democrats, it does *not* include those who contributed by attending Jackson Day Dinners. Collections made by clubs or committees are listed as "Impossible to allocate." The number of contributions credited to "Labor" are those of *groups* rather than *individuals*, and each represented the gift of a large number of trade union members. The figure for the total number of Republican contributors represents the receipts issued during the calendar year 1940. The writer is indebted to Mrs. Mary C. Salisbury, comptroller of the Democratic National Committee, for the number of contributors to that organization.

<sup>46</sup> The percentages are as follows: 1928, 12.5; 1932, 16.0; 1936, 18.5.

the party of the "little fellow." In contrast to this, the small contributor played a less important rôle in the Republican party in 1940 than in 1936.<sup>47</sup>

A study of the upper brackets in Table VII shows a sharp decrease in importance of contributions of \$5,000 or more. In 1936, 26.0 per cent of the contributions of the Democratic party fell into this class; in 1940, the percentage had dropped to 13.1 per cent. Even more striking is the drop in the Republican percentage from 24.2 to 3.8. However, if one probes into the contributions of the next two groups, one finds that although in the Democratic party the relative importance of contributors in the two groups, \$1,000 to \$4,999, and \$100 to \$999, remained constant in 1936 and 1940, in the Republican party, contributors in these two brackets were much more important in 1940 than in 1936.<sup>48</sup> Thus, in the Democratic party, the loss of large contributions was offset by many very small gifts, but in the case of the Republicans the change was the less radical shift from very large contributions to those of medium size. The fact that a large number of the contributions in the \$1,000 to \$4,999 group were in amounts of \$4,000 makes the shift even less significant.<sup>49</sup>

In 1940, neither national committee made a spectacular "drive" for a record number of contributors, and the number giving to the respective party organizations was probably less than in 1936. The number of contributors to the Democratic National Committee was 37,998, while 39,169 contributions were recorded by the Republican National Committee.<sup>50</sup> However, neither figure gives an accurate picture of the number of persons participating in the financing of the campaign. The Democratic figure does not include the large number of trade union members whose dues helped make up the contributions from labor organizations, nor the numerous party enthusiasts whose attendance at Jackson Day dinners helped to swell the party fund.<sup>51</sup> The Republican figure is equally misleading because it does not include the number of persons contributing to the finance committees and to the numerous Willkie Clubs. There were over 29,000 contributors to the New Jersey Republican Finance Committee alone, and thousands contributed to the United Republican Finance Committee of Metropolitan New York.<sup>52</sup> It is not unlikely that more voters

<sup>47</sup> The Republican figures are: 1928, 8.2; 1932, 9.1; 1936, 13.5.

<sup>48</sup> In 1936, contributions of \$1,000 to \$4,999 represented 19.4 per cent of the total Democratic funds; contributions of \$100 to \$999 represented 18.0 per cent. The Republican figures for 1936 are as follows: \$1,000 to \$4,999, 26.8 per cent; \$100 to \$999, 23.9 per cent. <sup>49</sup> There were 56 contributions of \$4,000.

<sup>50</sup> The 1936 figures are: Democratic, 54,818; Republican, 84,770.

<sup>51</sup> Reports from 33 of the states which held dinners in 1940 indicate that they were attended by 18,159 persons. The writer is indebted to Mrs. Mary S. Salisbury, comptroller of the Democratic National Committee, for this information.

<sup>52</sup> The reports which this committee filed in the office of the clerk are spread through 37 fat volumes.

contributed to Willkie's campaign than to that of any Republican candidate in history.

One purpose of the Hatch Act was to limit individual contributions to \$5,000 and, for the most part, the letter of the law was observed. The Democratic National Committee received no contributions of more than that amount during the calendar year 1940. The Republican records show a few cases in which the total contributed by an individual was \$6,000. F. M. Hesse, of Pittsburgh, contributed \$4,000 to the Republican National Committee before the passage of the Hatch Act, and \$2,000 to the same organization in October, after the passage of the act. The records of the Associated Willkie Clubs of America credit Stanley Resor with \$4,000 on October 16 and \$2,000 on October 31. Contributions to a single organization, after the passage of the act, totaling more than \$5,000 would seem to be a violation of its provisions, however leniently one interprets it.

In both parties, the aggregate contributions of husbands and wives or members of the same families frequently exceeded \$5,000, as Tables VIII and IX show. The Biddles, the Claytons, the Davies, the Morgenthau, and the Strauses, all of whom hold positions in the Roosevelt administration, were among the families contributing most generously to the Democratic Committee (Table VIII). Table IX includes only the more conspicuous family contributions to the Republican National Committee,<sup>53</sup>

TABLE VIII  
FAMILIES CONTRIBUTING MORE THAN \$5,000 TO DEMOCRATIC NATIONAL  
COMMITTEE, JANUARY 1 TO DECEMBER 31, 1940<sup>54</sup>

<i>Name</i>	<i>Address</i>	<i>Amount</i>
Biddle, A. J. Drexel, Jr. . . . .	Philadelphia, Pa.	\$5,000
Biddle, Mrs. A. J. Drexel. . . . .	Philadelphia, Pa.	5,000
Clayton, W. L. . . . .	Houston, Texas	5,000
Clayton, Mrs. W. L. . . . .	Houston, Texas	5,000
Davies, Joseph E. . . . .	Washington, D. C.	5,000
Davies, Marjorie Post (Mrs. Joseph E.)	Washington, D. C.	5,000
Getty, J. Paul. . . . .	Los Angeles, California	2,500
Getty, Sarah C. . . . .	Los Angeles, California	5,000
Morgenthau, Henry. . . . .	1133 Fifth Avenue, New York	5,000
Morgenthau, Mrs. Henry. . . . .	1133 Fifth Avenue, New York	1,000
Morgenthau, Henry, Jr. . . . .	Washington, D. C.	1,000
Pauley, Edwin W. . . . .	Los Angeles, California	5,000
Pauley, Harold R. . . . .	Los Angeles, California	5,000
Straus, Nathan. . . . .	Washington, D. C.	5,000
Straus, Mrs. Nathan. . . . .	Washington, D. C.	5,000

<sup>53</sup> The Gillette Committee, *Report*, pp. 143-7, lists the contributions of other "prominent" families to various pro-Willkie organizations.

<sup>54</sup> From the reports filed with the clerk of the House.



but it gives convincing evidence that a limitation may be circumvented by substituting many small gifts for a single large one.

Table IX also demonstrates that a limitation upon the size of individual contributions which does not cover gifts to state and local committees is

TABLE IX  
LARGE FAMILY CONTRIBUTIONS TO REPUBLICAN CAMPAIGN, 1937-1940.<sup>55</sup>

Name	National Committee		Other Organizations 1940	Total Individual	Total Family
	1937-39	1940			
Brown					
Donaldson.....	\$ 1,000	\$ 4,000	\$ 17,000	\$ 22,000	
Mrs. Donaldson.....	—	—	6,000	6,000	
Total.....	\$ 1,000	\$ 4,000	\$ 23,000		\$ 28,000
Copley, Ira C.....	\$ 2,000	\$ 1,000	\$ 29,900		\$ 32,900
du Pont					
Eugene.....	—	\$ 3,000	\$ 2,500	\$ 5,500	
H. F.....	—	—	5,000	5,000	
Irénée.....	—	—	12,000	12,000	
Lammont.....	4,000	4,000	45,000	53,000	
Lydia.....	—	—	6,000	6,000	
Octavia M.....	—	—	5,000	5,000	
Pierre S., III.....	—	—	5,000	5,000	
Reynolds.....	—	5,000	—	5,000	
Fifty-eight other members of family <sup>a</sup> .....	—	5,000	102,280	107,280	
Total.....	\$ 4,000	\$17,000	\$182,780		\$203,780

<sup>a</sup> A. Felix, A. Felix, Jr., Alfred V., Alice B., Miss Amy, Eileen M., Eleanor Hoyt, Eleuthera, Mrs. Eugene, Francis I., Henry B., Mrs. H. P., Hubert I., Irene S., Janet G., Mrs. Lammont, Mrs. Mary Chichester, N. R., P. S., Mrs. Pierre S., F. S. and Alice B., Rénée and Richard D. du Pont; also Alice du Pont Buck, Mary du Pont Faulkner, Rénée du Pont Kitchell, Jane du Pont Lunger, I. Sophie du Pont May, Mrs. Alice du Pont Mills, Alex du Pont Perkins, Edith du Pont Riegel, Mrs. Phyllis du Pont Schutt, Manoir du Pont Scott, Isabelle du Pont Sharp, Mrs. Deo du Pont Weymouth, Ellen du Pont Wheelwright, Esther du Pont Weir, James N. Andrews, H. F. Brown, Mr. and Mrs. John T. DeBlois-Wack, Molly Laird Downs, Alleta L. Downs, Mrs. Robert Downs, Natalie Edmonds, Mrs. James H. Faulkner, Lucile E. Flint, Mrs. Bruce Ford, C. N. Greenwalt, Margaretta L. Greenwalt, Rosa Laird, Wilhelmina Laird, William Winder Laird, Jr., Mrs. Sophie du Pont Laird, Ernest Nugent May, Anne Peyton, Richard Eveland Riegel, H. S. Schutt, H. Rodney Sharp, Mrs. Henry H. Silliman.

<sup>55</sup> Except for contributions to the National Committee, data are from Gillette Committee, *Report*, pp. 143-7.

TABLE IX (Continued)

<i>Name</i>	<i>National Committee</i>		<i>Other Organizations</i> 1940	<i>Total Individual</i>	<i>Total Family</i>
	1937-39	1940			
Pew					
J. Howard.....	\$14,000	—	\$ 23,000	\$ 37,000	
J. N. (estate of).....	—	—	5,000	5,000	
J. N., Jr.....	14,000	—	17,500	31,500	
Mabel Ethel.....	14,000	—	22,500	36,500	
Mrs. Mabel Pew Myrin	14,000	—	19,500	33,500	
Eight other members of family.....	—	—	21,000	21,000	
Total.....	\$56,000	—	\$108,500		\$164,500
Pitcairn					
Mrs. Clara D.....	—	—	\$ 5,500	\$ 5,500	
Harold F.....	\$ 2,500	\$ 1,900	1,500	5,900	
Raymond.....	2,500	1,900	1,301	5,701	
Theodore.....	2,500	1,900	2,000	6,400	
Five other members of family.....	—	—	13,113	13,113	
Total.....	\$ 7,500	\$ 5,700	\$ 23,414		\$ 36,614
Queeny					
Edgar Monsanto.....	\$ 7,670	\$ 5,000	\$ 35,375	\$ 48,045	
Mrs. Olga M.....	5,000	—	1,000	6,000	
Eugene M.....	—	—	1,000	1,000	
Total.....	\$12,670	\$ 5,000	\$ 37,375		\$ 55,045
Rockefeller					
John D., Jr.....	\$11,500	\$ 2,500	\$ 19,000	\$ 33,000	
Mrs. John D., Jr.....	6,500	1,000	15,000	22,500	
John D., III.....	9,000	—	5,000	14,000	
Lawrence S.....	14,000	4,000	1,000	19,000	
Nelson A.....	15,000	1,000	3,000	19,000	
Five other members of family.....	1,000	—	4,500	5,500	
Total.....	\$57,000	\$ 8,500	\$ 47,500		\$113,000
Sloan					
Alfred P., Jr.....	\$ 5,000	\$ 4,000	\$ 19,500	\$ 28,500	
Mrs. Alfred P., Jr.....	1,000	4,000	8,500	13,500	
Total.....	\$ 6,000	\$ 8,000	\$ 28,000		\$ 42,000
Grand Total...					\$675,839

farcical. Most of the money contributed by members of these families to the Willkie cause was given to organizations other than the national committee. The distribution of the gifts of two of these individuals is shown in Table X. Lammont du Pont contributed to three finance com-

TABLE X  
DISTRIBUTION OF CONTRIBUTIONS OF THE TWO LARGEST CONTRIBUTORS TO  
THE REPUBLICAN CAMPAIGN, 1940<sup>68</sup>

du Pont, Lammont	
Republican National Committee.....	\$4,000
Republican Senatorial Campaign Committee.....	4,000
Republican Finance Committee of New Jersey.....	1,000
Republican Central Committee of New Jersey.....	3,000
Maryland Committee.....	4,000
Tennessee Republican Executive Committee.....	4,000
West Virginia Republican State Committee.....	4,000
Wyoming Republican State Committee.....	4,000
Missouri Republican State Committee.....	4,000
South Dakota Republican Central Committee.....	4,000
Ohio Republican State Central Committee.....	1,000
Indiana Republican State Finance Committee.....	4,000
Republican Finance Committee of Pennsylvania.....	4,000
Ohio Republican Finance Committee.....	4,000
Total.....	\$49,000
Queeny, Edgar Monsanto	
Republican National Committee.....	\$5,000
Republican Congressional Committee.....	4,000
Republican Senatorial Campaign Committee.....	4,000
Republican Finance Committee of Pennsylvania.....	4,000
Republican Finance Committee of Connecticut.....	4,000
United Republican Finance Committee of New York.....	750
Kentucky Republican State Committee.....	4,000
Missouri Republican Finance Committee.....	4,000
Wyoming State Republican Committee.....	1,000
Missouri Republican State Committee.....	4,000
Paid personally to Ketchum, Inc., for services of advertising counsel.....	5,625
Total.....	\$40,375

mittees, to state committees as widely removed from his home state as South Dakota, Wyoming, and Missouri, as well as to the Republican National Committee and the Senatorial Campaign Committee. Edgar Monsanto Queeny, resident of Missouri, contributed to finance committees and state committees in Connecticut, New York, Pennsylvania, and Wyoming.

<sup>68</sup> From the Gillette Committee, *Report*, pp. 143-7.

The \$203,000 contributed by members of the du Pont family, the \$164,500 contributed by the Pews, and the \$113,000 which the Rockefellers gave indicate that the framers of the Hatch Act failed to eliminate the dominant rôle of "America's Sixty Families" in the financing of political campaigns. The "haves" could, and did, rise to the defense of the system under which their fortunes had been made. Nevertheless, it is probable that the \$5,000 limitation had some restraining effect. In 1936, the du Ponts and the Pews contributed more than \$1,000,000 to various Republican organizations; in 1940, their financial stake in the campaign was less than half as great.

The Democrats, whether from virtue or from necessity, conformed more closely to the spirit as well as the letter of the \$5,000 limitation. The aggregate contributions of an individual exceeded \$5,000 in only one instance. A. J. Drexel Biddle, Jr., gave \$5,000 to the Democratic National Committee on September 10 and an equal amount to the Pennsylvania State Committee on the same date.<sup>57</sup> One should not forget, however, that Richard J. Reynolds, who had contributed \$5,000 to the Democratic National Committee in September, made loans to various state committees which totaled \$300,000. This involved no violation of the Hatch Act, but it was hardly healthy financing.

A study of the economic interests of the larger contributors to the national committees, presented in Table XI, shows some interesting contrasts and gives further evidence of a Hamiltonian-Jeffersonian cleavage in 1940. The Democratic party failed to regain any of the support of the bankers and brokers who deserted the party in 1936,<sup>58</sup> and lost the support of most of the manufacturers. In 1936, manufacturers furnished 13.6 per cent of the large Democratic contributions, but in 1940 only 7.4 per cent came from this source. On the other hand, the Republican party received about the same proportion of its large contributions from bankers and brokers in 1940 as in 1936, and the support of manufacturers rose from 29.6 per cent in 1936 to 34.0 per cent in 1940. Almost half of all the Republican contributions of \$1,000 or more came from these two groups in 1940. Particularly striking was the way in which the "giants"—iron and steel—came to the aid of the party.

The two groups which gave most generously to the Democratic party in 1940 were officeholders—diplomats for the most part—and organized labor. Four years before, these two groups had given about one-quarter of the contributions of \$1,000 or more; in 1940 their share of the campaign fund rose to more than one-third. Brewers and distillers; oil men; newspaper, radio, and advertising interests; and members of the professions

<sup>57</sup> Gillette Committee, *Report*, p. 148.

<sup>58</sup> Only 3.3 per cent of the contributions of \$1,000 or more came from this group in 1936, compared to 25.3 per cent in 1928 and 24.2 per cent in 1932.

TABLE XI  
DISTRIBUTION BY ECONOMIC INTEREST OF CONTRIBUTIONS  
OF \$1,000 OR MORE TO NATIONAL COMMITTEES, 1940<sup>59</sup>

Classification	Democrats		Republicans	
	Amount	Per Cent	Amount	Per Cent
Bankers and brokers.....	\$ 16,000	3.1	\$ 168,550	13.7
Manufacturers.....	38,500	7.4	420,077	34.0
<i>Iron and steel</i> <sup>a</sup> .....	17,500	3.4	166,333	13.5
<i>Chemicals</i> .....	3,000	.6	39,000	3.1
<i>Other</i> .....	18,000	3.4	214,744	17.4
Brewers and distillers.....	20,500	3.9	8,600	.7
Oil, including refining and oil land development.....	27,500	5.3	34,350	2.8
Mining, including coal, copper, and aluminum.....	—	—	38,350	3.1
Public utilities <sup>b</sup> .....	9,500	1.8	16,000	1.3
Merchants: wholesale and retail....	10,000	1.9	32,500	2.6
Building materials (including lumber) and contracting.....	6,500	1.2	26,500	2.1
Newspapers, radio, advertising....	23,369	4.5	22,500	1.8
Professions.....	44,500	8.6	50,250	4.1
Officeholders.....	100,500	19.3	—	—
Organized labor.....	82,841	15.9	—	—
Other classifications.....	29,000	5.6	72,700	5.9
Unidentified.....	111,667	21.5	343,750	27.9
Total.....	\$520,377	100.0	\$1,234,127	100.0

<sup>a</sup> Including industrial and farm machinery, but not automobiles.

<sup>b</sup> Including railroads, steamship lines, and buses, as well as gas and electricity.

(mostly lawyers) were also well represented among the Democratic contributors.

Although most of the newspapers of the country supported the Republican ticket in the campaign, their Democratic opponents received a larger percentage of substantial contributions from newspaper, radio, and advertising interests than did the G.O.P. Even more surprising, in view of the fact that the former head of the Commonwealth and Southern was the Republican standard-bearer, was the relative unimportance of contributions from power companies. These interests may have given to

<sup>59</sup> In identifying the interests of contributors, *Who's Who in America*, *Poor's Register of Directors of Corporations*, and the directories and telephone books of various cities were used. Under "Organized Labor" are included *all* contributions from trade unions, regardless of amount. Speaking strictly, none of these is a contribution of "\$1,000 or more," since each includes many individual contributions.

other agencies, but their rôle in financing the Republican National Committee was insignificant.

Included among the steel manufacturers contributing to the Republican National Committee were representatives of the following companies: Alleghany, Bethlehem, Edgewater, Great Lakes, Inland, Laclede, Midland, National, Republic, Weirton, Youngstown. Allis-Chalmers, Buckeye Steel Castings Company, and Mesta Machine Company, manufacturers of machine parts, were also heavily represented. Among "other" manufacturers were makers of automobiles, glass, paper products, paints, rope, rubber, textiles, food products, electrical equipment, kodaks, adding machines, radios, fountain pens, soap, and toothpaste. The Monsanto Chemical Company and Eli Lilly, as well as the du Pont interests, were represented among the chemical manufacturers. The only large concerns represented among the contributors to the Democratic National Committee were the American Locomotive Company, the American Car and Foundry Company, and the International Business Machines Corporation.

The records show one interesting instance in which an officeholder in the Democratic administration contributed to the Republican National Committee. Secretary of the Navy Frank Knox, appointed to the cabinet as a Republican, contributed \$1,000 to that party.

The Democratic National Committee ended the 1940 campaign with an indebtedness of \$423,062. Of this, \$77,500 represented money borrowed from various individuals in amounts of \$5,000 or less; unpaid bills, chiefly for radio broadcasting, made up the balance. There was no substantial reduction in this indebtedness in the next two months, but on February 28, 1941, the committee had a balance of \$99,000, reducing the net indebtedness to about \$314,000—substantially less than the \$440,000 net deficit of four years before.

The Republican National Committee faces the next four years in a much healthier financial state than after the 1936 campaign. Although its unpaid bills totaled \$345,000 on October 31, 1940, all of these were paid before the end of the year, and Mr. Goodspeed, the retiring treasurer, was in the enviable position of being able to turn over to his successor a solvent organization.<sup>60</sup>

It is usually dangerous to condemn a legislative enactment on the basis of limited experience. Nevertheless, in this writer's judgment, the campaign of 1940 offers convincing evidence that the present Hatch Act, in so far as it attempts to regulate campaign funds, is ambiguous, unworkable, and conducive to unhealthy political practices. Similar conclusions were reached by the Gillette Committee<sup>61</sup> and the Special Assistant to the

<sup>60</sup> Letter from Mr. Goodspeed, dated Apr. 8, 1941, in reply to a specific query from the writer.

<sup>61</sup> *Report*, p. 80.

Attorney General.<sup>62</sup> Mr. Milligan's carefully guarded, but explicit, statement on this point is well worth quoting in full: "We respectfully submit that in our opinion the present existing federal laws relative to contributions and expenditures of political parties are fatally defective in accomplishing the purpose intended by Congress and are, in our opinion, unenforceable under the conditions which have been presented in this investigation."<sup>63</sup>

If it was the intent of the framers of the Hatch Act to limit to \$3,000,000 the *aggregate* contributions and expenditures of a political *party*, they failed to achieve that purpose. Expenditures on behalf of the Democratic *party* were almost double that amount, and the Republicans spent close to five times that sum.<sup>64</sup> The Special Assistant to the Attorney General characterized the expenditures as "excessive"; the Gillette Committee used the adjective "enormous." As both investigations point out, much of this expenditure was made deliberately in a manner to circumvent the spirit without violating the letter of the act. The real effect of the \$3,000,000 limitation, so far as the Republicans were concerned, was an unfortunate *decentralization* of the collection and distribution of funds. Independent political committees and finance committees, each claiming the right to spend that amount, sprang up like mushrooms all over the country. In the early part of the campaign, the Democrats conformed to the spirit as well as to the letter of the act; but, faced with the possibility of being forced to abandon what they considered an essential last-minute radio campaign, they farmed out their contracts to various state committees with the assurance that the bills would be met by loans from a fairy godfather. Although no violation of the letter of the law was involved in these transactions, they certainly contravened its purpose. The effect of limitations which result in such devious practices is unhealthy rather than salutary.

The \$5,000 limitation upon individual contributions was equally ineffective. As Mr. Milligan points out, the provision is nullified in the very act itself by the exceptions granted in the case of contributions to state and local political committees. The limitation probably had a certain nuisance value, and it may have made wealthy contributors more circumspect about the aggregate total of their gifts, as well as the organizations to which they were given, but if the framers of the act hoped to limit to \$5,000 the financial stake which any one individual had in a political campaign, they failed miserably.

The one provision of the Hatch Act which seems to have been entirely effective was the section directed at the famous—or infamous—Democratic *Book*. This result may have been commendable, but it is hardly a

<sup>62</sup> Mimeographed report dated Feb. 26, 1941.

<sup>63</sup> *Ibid.*, p. 11.

<sup>64</sup> See Table V above.

notable advance in the elimination of nefarious practices in the collection and distribution of campaign funds.

Granting that the Hatch Act failed in its major objectives, what then? Speaking broadly, there would seem to be three alternatives: (1) strengthen the act; (2) repeal the provisions and return to the *status quo ante*; or (3) repeal the provisions and substitute other types of regulation.

The Gillette Committee suggested the desirability of "exploration and study" of remedial legislation designed, among other things, to make the limitations of the Hatch Act effective.<sup>65</sup> The Special Assistant to the Attorney General recommended remedial legislation, admirably specific in character. His report proposed to make the \$3,000,000 limitation effective by broadening Section 21 to prohibit any committee, other than the regular national party committee, from expending any funds whatever on behalf of the national party candidates, after the nominations are made, except with the written permission or consent of the regular national party committee.<sup>66</sup> This drastic centralization of financial control was to be accompanied by a clarification of the definition of "political committee." The problem of limiting the size of individual contributions was to be met by repealing Section 13 and substituting provisions "limiting the *aggregate* contributions any individual may make during one calendar year for political purposes."<sup>67</sup> The suggestion was added that the present \$5,000 limit might be unnecessarily low for *aggregate* individual contributions.<sup>68</sup>

Experience with the Hatch Act, and Mr. Milligan's recommendations, raise an important issue which should be faced squarely. The existing limitations do not limit and have resulted in numerous circumventions of the law. If we are to have limitations that really limit, we must centralize the control of campaign funds in the hands of the national committee to an extent which would give pause to many a member of Congress who somewhat blithely voted for the Hatch Act in July, 1940. Limitations cannot be effective unless we are willing to take such action. This writer is inclined to doubt whether the adoption of Mr. Milligan's recommendations, carefully phrased as they are, would stop up all the gaps. When is money spent "on behalf of a candidate for President"? Would funds spent by state and local committees on behalf of the party ticket, state as well as national, be included? And if not, would not the limitation be rendered ineffective by expanding the activities of these committees? Would it not be possible to defeat the \$5,000 limitation upon individual contributions by hanging gifts on more branches of one's family tree, or even one's business tree? The adoption of Mr. Milligan's recommendations would stop up many gaps in the Hatch Act, but, in the opinion of this writer, all of them cannot be plugged unless we are willing to take the drastic step of making all state and local committees subsidiaries of the national com-

<sup>65</sup> *Report*, p. 80.

<sup>66</sup> Mimeographed report, p. 5.

<sup>67</sup> *Ibid.*, p. 8.

<sup>68</sup> *Ibid.*, p. 9.



mittees and subject to complete financial control from that quarter. As long as any gaps remain, subterfuge will be resorted to, making it difficult if not impossible to assemble the information which is essential to any effective publicity regarding the financing of the campaign.

It has long been the conviction of the writer that the question whether a party has spent "too much" should be settled in courts of public opinion rather than in courts of law. It does not follow, however, that our present course should be a return to the *status quo ante*. Instead, we should adopt a constructive program laying more emphasis upon publicity and less upon prohibition.<sup>69</sup> If the ineffectiveness of the Hatch Act limitations in the 1940 campaign should lead to such a redirection of our attack upon the problem of money in elections, the act would have served a highly useful purpose.

LOUISE OVERACKER.

*Wellesley College.*

**Public Ownership and Tax Replacement by the T.V.A.** The state and county governments in the Tennessee Valley area, particularly in Tennessee, completed 1940 with one of their most pressing financial problems solved or well on the way to solution. The threatened loss of taxes to governmental units, resulting from the program of public ownership of power and the purchase by the Tennessee Valley Authority and the municipalities of the properties of private electrical power companies,<sup>1</sup> had been serious to many counties facing bankruptcy, curtailment of services, or exorbitant taxes. Besides the financial effects, the situation strikingly demonstrated the need for reforms in local government, mainly the consolidation of counties and the introduction of better budgeting and accounting practices. Moreover, the problem has also been significant because of certain issues resulting from the venture into public ownership. Should proprietary agencies of the national government engaged in competition with private business and acquiring existing taxable facilities be responsible for the taxes thereby displaced and replace them as a matter of policy? Are proprietary functions of the national government subject to state and local taxing authority? These issues have demanded widespread consideration not only in the Tennessee Valley area but also in other sections where public power programs are being tried on a large scale. A bill was introduced into Congress on September 30, 1940, to provide for payments to governmental units affected by displacement of taxes arising from the Bonneville Power Project,<sup>2</sup> and a more recent bill

<sup>69</sup> *Money in Elections*, pp. 374-404.

<sup>1</sup> For the companies affected and the taxes formerly levied on the properties purchased, see the Independent Offices Appropriation Bill for 1941, *Hearings before the Subcommittee of the Committee on Appropriations*, House of Representatives, 76th Cong., 3rd Sess., Part 2, p. 1713.

<sup>2</sup> S4390, 76th Cong., 3rd Sess.

applies to the proposed Arkansas Valley Authority Project.<sup>3</sup> The passage of the Norris-Sparkman amendment by Congress in June, 1940, whereby payments in lieu of taxes are being made by the T.V.A., has answered these questions and relieved the pressing financial aspects of the situation. The tax replacement provision has now been in operation more than six months, and an analysis of the period affords an interesting insight into its effects on the various governments concerned.

The issue regarding dislocation of taxes in the Tennessee Valley arose almost as soon as the construction of Norris Dam was under way. It did not become serious, however, until July, 1939, when an agreement was consummated between the T.V.A. and the Commonwealth and Southern Corporation whereby properties of the Tennessee Electric Power Company were sold to the Authority and certain municipalities of Tennessee.<sup>4</sup> The 1939 taxes were not greatly involved, since the principal taxes for the year had been pro-rated between the Company and the Authority as provided in the purchase contract. However, the problem became acute in 1940, when heavy losses were expected.

*Analysis of the Taxes Displaced.* The total amount of state and local taxes previously levied on electric utilities and reservoir lands acquired or intended for acquisition by the T.V.A. and the municipalities distributing T.V.A. power was estimated to be \$3,221,000. Of this sum, \$2,950,000, or 91.6 per cent, related to Tennessee alone, and the balance was distributed among the other five states in the Valley—Mississippi, Georgia, Alabama, Kentucky, and North Carolina—in the order named.<sup>5</sup> The losses of the latter states were expected to increase as the Authority extended its activities.

The loss in Tennessee was classified as follows:<sup>6</sup>

A. Ad Valorem Property Taxes				
<i>Agency Acquiring Property</i>	<i>State</i>	<i>County</i>	<i>Municipal</i>	<i>Total</i>
T.V.A.	\$28,603.02	\$ 736,563.40	\$ 57,149.83	\$ 822,316.25
Municipalities	34,412.08	521,902.48	798,516.82	1,353,831.38
County Owned Systems	267.80	6,973.00	6,285.00	13,525.80
Coöperatives, etc.	2,191.78	57,497.14	10,877.01	70,565.93
Total	\$65,474.68	\$1,322,936.02	\$872,828.66	\$2,261,239.36
B. Gross receipts, franchise and privilege taxes, etc., to state of Tennessee, on properties acquired by all the agencies				\$ 800,426.00
C. Total displacement in Tennessee				\$3,061,665.00

<sup>3</sup> Arkansas Valley Authority Act of 1941, H. R. 1823, 77th Cong., 1st Sess., introduced Jan. 10, 1941.

<sup>4</sup> The contract is given in the hearings on the Independent Offices Appropriation Bill for 1941, *op. cit.*, p. 1668.

<sup>5</sup> These figures are from the Tennessee Valley Authority Release of Sept. 17, 1940.

Although the situation was very complicated and necessitated effective relief, much confusion of thought resulted from characterizing the entire \$3,061,665 as a loss and attributing it to public ownership, especially the T.V.A. An analysis of the situation shows that only about half of the total might be termed a loss, while the balance was merely dislocated and might easily be replaced. In this balance was \$798,516.82 representing municipal taxes formerly levied on the distribution systems acquired by the cities. This was in no sense a loss, since the contracts between the T.V.A. and the municipalities, as well as state laws establishing local power boards, provided that the systems continue to pay the municipalities the same amount of taxes that was formerly paid. In fact, the cities are much better off under public ownership than formerly. Besides effecting large savings from the lower rates on electricity used for governmental purposes, they are making high profits on the operation of the distribution systems. Furthermore, other ad valorem taxes formerly levied on the distribution systems, comprising \$521,902 in county revenues and \$34,412 in state revenues, were also merely displaced and might be recaptured under provisions of the contracts between the Authority and the municipalities. Legislative action was necessary to provide for replacement, however, and the policy governing each municipal power board was set forth in the special act creating it. The act establishing the Knoxville board<sup>7</sup> permitted it to replace former county and state taxes. On the other hand, the act creating the Chattanooga board<sup>8</sup> contained no provision requiring, authorizing, or even permitting, it to replace county or state taxes. In such an instance, the board collected and retained the amount that might go to the counties and state. This situation was also true of other cities in Tennessee and Alabama, and in both states the failure to share in the tax funds collected by the municipal systems has evoked bitter criticism and pressure on the legislatures. This is recognized as only a state problem that is expected to be remedied at the legislative sessions of 1941. Likewise subject to the states' jurisdictions are the comparatively small ad valorem taxes allocable to the county-owned systems, coöperatives, and associations. Altogether, \$1,438,923 represented property taxes that might be recaptured.

In a different category was \$800,426 of gross receipts, franchise, and

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<sup>6</sup> These figures are from the *Report on Tax Replacement Requirements in Tennessee, Necessitated by Sale of Private Electric Utility Property to Various Public Agencies*, Tennessee Tax Replacement Commission, by Stanley J. White and E. H. Eakle, Exhibit D, p. 16. (Hereafter referred to as the Tennessee Tax Replacement Commission Report.)

<sup>7</sup> Chap. 106, *Private Acts of the State of Tennessee*, 1939.

<sup>8</sup> Chap. 455, *Private Acts of the State of Tennessee*, 1935; and Chaps. 538 and 611, 1939.

other taxes formerly paid to the state of Tennessee by the power companies. No provision was made by the T.V.A. or the distribution systems for replacing this sum, and the T.V.A. admitted responsibility for only 42.2 per cent, since it acquired that proportion of the properties purchased from the companies, according to its figures. Furthermore, although the loss was a matter of grave concern in efforts to balance the budget, one could hardly doubt the benefits from public power when it was estimated that approximately eight million dollars would be saved annually by consumers in the state from the lower rates on electricity.

The crux of the whole replacement controversy was \$736,563 formerly collected by the counties on private electric properties which were directly acquired by the Authority. Since this was a government corporation and therefore exempt from state and local taxation, the amount passed from the county tax rolls and was responsible for the widespread agitation for replacement by the state or national government. Unlike those county taxes that might be recovered from municipal systems and that incidentally related in the main to the most wealthy counties, the losses for which the Authority was responsible bore heavily on the poorest, most sparsely-populated, sections of the state. Altogether, there were nine counties in Tennessee that suffered a loss of 10 per cent or more in their annual revenues.<sup>9</sup> The relation of this loss to annual revenues, and of the assessed value of the property acquired by the T.V.A. to the total assessed value, is shown by the following table:<sup>10</sup>

County	ASSESSED VALUE			ANNUAL REVENUES		
	T.V.A. Purchase			T.V.A. Purchase		
	Total County	Amount	Per cent	Total County	Amount	Per cent
Polk	\$14,062,008	\$5,587,600	39.7	\$373,082	\$105,606	28.3
Marion	10,038,932	3,242,220	32.3	342,242	80,321	23.5
Wayne	2,655,392	642,580	24.2	114,791	18,763	16.3
Bledsoe	2,814,793	543,030	19.3	105,301	16,128	15.3
White	4,886,742	1,425,530	29.2	241,569	33,500	13.9
McMinn	8,746,084	1,585,400	18.1	384,507	51,106	13.3
Van Buren	1,280,239	537,390	42.0	64,358	7,739	12.0
Warren	6,649,372	2,231,985	33.6	314,923	36,828	11.7
Sequatchie	1,735,773	372,500	21.5	67,217	7,152	10.6

With a combined population of 136,265, according to the 1940 census, these counties averaged only 15,140 persons per county, which was approximately half that of the state as a whole. The combined taxable wealth, moreover, was \$52,884,580, an average of \$5,876,066 per county,

<sup>9</sup> Fannin county, Georgia, was second highest in the whole list of counties, losing 24 per cent of its revenue.

<sup>10</sup> These figures are from the hearings on the Independent Offices Appropriation Bill for 1941, *op. cit.*, p. 1719.

compared with \$15,773,705 for the state. Faced with the loss of a large part of their revenue, the counties had the choice of increasing the tax rate or levying new taxes, curtailing governmental services, or requesting assistance from the state or national government.

*Proposals for Replacement.* Of the several possible courses, the least likely was replacing the losses by increasing the tax rate, already high in many counties. Also impractical was the proposal for each county to recoup its losses by taxing the local consumers of T.V.A. power, because the consumption was generally low in the counties experiencing the greatest losses. There were only 1,103 users of power in Polk county, and to replace the loss, each would have to be taxed more than \$100.<sup>11</sup> The 71 consumers in Van Buren county would have to pay approximately the same amount.

The proposal for state assistance from a tax on consumers of T.V.A. power was even more controversial, and raised grave questions as to the feasibility, soundness, and efficacy of such a measure. An administration-sponsored bill in the Tennessee legislature to replace the state's loss by a three per cent gross receipts tax on the power revenues of the municipal distribution systems<sup>12</sup> encountered great opposition from the municipalities and was finally dropped. Opponents feared that a tax once imposed might be so increased as to destroy the purpose of the T.V.A. This attitude was well expressed by Leon Jourolmon, state utilities commissioner. "It would be to the best interests of the state," he said, "to adopt a policy to foster the widest use of electrical power, and not one which would consider municipal power systems as a source of state revenue."<sup>13</sup> This view was also reportedly held by the T.V.A.

Even if the state should levy a tax on the consumption of electricity and distribute the proceeds to the counties, the state constitution would probably defeat the purpose. The requirement that only general laws be passed was construed to restrict the distribution of payments to such bases as population or taxable wealth, without regard to the amount of loss. Counties suffering the most would thereby benefit the least, and the situation would not be relieved.<sup>14</sup>

A bill was proposed in the Alabama legislature to levy a tax of  $1\frac{1}{4}$  mills on each kilowatt hour of electrical energy obtained from governmental

<sup>11</sup> See the testimony of Harry J. Schaeffer, county attorney of Polk county, *Hearings before the Committee on Military Affairs*, House of Representatives, 76th Cong., 3rd Sess., on Bills to Amend the Tennessee Valley Authority Act of 1933.

<sup>12</sup> The text of the bill is given in the *Tennessee Tax Replacement Commission Report*, p. 83. <sup>13</sup> *Nashville Tennessean*, Feb. 12, 1939.

<sup>14</sup> See statement of Attorney General Roy H. Beeler of Tennessee, *Chattanooga Tribune*, Apr. 29, 1940. Various suggestions were made to amend the state constitution. For the likelihood of this, see W. H. Combs, "An Unamended State Constitution: The Tennessee Constitution of 1870," in this *REVIEW*, Vol. 32, pp. 514-524 (June, 1938).

systems, and was also bitterly attacked by the municipalities selling T.V.A. power. They declared that the bill would establish a precedent for the state's taxing the departmental activity of a municipal government and open the way to the taxing of water, gas, and sewer systems.<sup>15</sup> Governor Dixon also opposed the bill, saying it was "basically unsound" for one governmental agency to tax another. However, he believed that a tax equivalent should be figured into the rates of the distribution systems, to be paid by the ultimate consumer.

In addition to the taxes on electricity proposed for the states or counties, a federal excise tax on the consumption of T.V.A. power was also advocated, for the purpose of putting the burden on those benefiting by cheap electricity. In view of the constitutional requirement that taxes should be uniform throughout the country, the question arose as to whether a federal tax could be imposed on T.V.A. consumers without applying uniformly to all electric consumers in the nation. Some legal opinion held that the tax would be constitutional if it applied to all purchasers of federal power projects.<sup>16</sup> Such a tax, however, has not been widely advocated.

Besides the taxes proposed on the consumers of electricity, still more controversial measures embodied taxes directly applicable to the T.V.A. The Tennessee Taxpayers Association, ignoring the long-established immunity of federal agencies, urged that the Authority and the distribution systems be required to pay to the state and local governments the same taxes formerly levied on the private companies.<sup>17</sup> Senator Norris, to whom the proposal was addressed, declared he would oppose any attempts to subject the T.V.A. to the taxing power of any state or local government. Such a suggestion, he emphasized, was abhorrent and "would bring about the complete destruction of all federal government functions."<sup>18</sup> This view was firmly supported by Congress, which later declared in the Norris-Sparkman Amendment for replacing the taxes:<sup>19</sup> "The payments herein authorized are in lieu of taxation, and the corporation, its property, franchises, and income, are hereby expressly exempted from taxation in any manner or form by any state, county, municipality, or any subdivision or district thereof."

In the face of constitutional precedent, however, two attempts were made to tax directly the Authority, or its operations, to recover alleged tax losses. The Georgia legislature enacted two laws authorizing the state, counties, municipalities, or school districts to tax agencies of the federal government or of another state engaged in the generation, distribution,

<sup>15</sup> *Florence (Alabama) Times*, Mar. 6 and May 16, 1939.

<sup>16</sup> *New York Times*, Dec. 8, 1939.

<sup>17</sup> *Chattanooga Free Press*, Mar. 31, 1939.

<sup>18</sup> *New York Times*, Dec. 9, 1939.

<sup>19</sup> Public Resolution No. 88, 76th Cong. (Chap. 432, 3rd Sess.), Sec. 39.

or sale of electricity, and subjecting all property in the state belonging to agencies of the United States engaged in proprietary as distinguished from governmental activities to state taxation, at the same rate as private corporations engaged in similar business.<sup>20</sup> The measure was intended to alleviate the situation in Fannin county, which was one of the counties most seriously affected by tax displacement. The action of the state was widely criticized. Commented Representative Dirksen (Republican, Illinois): "Should the statutes be upheld, it would mean that despite all the benefits conferred upon this area from federal funds, the taxpayers of the other states would be called upon to help replace the taxes lost as result of federal activities, despite the fact that the taxpayers in other states derive no benefit from this operation. This would be almost as bad as charging Santa Claus for the privilege of coming down the chimney."<sup>21</sup>

Regarding the Georgia law and the assumed authority of the state to tax federal power agencies which carry on proprietary functions, Joseph C. Swidler, member of the legal division of the Authority, vigorously denied its constitutionality. "There is no precedent in any Supreme Court decision to permit any state or political subdivision to tax any federal property. If T.V.A. property could be taxed, so could post-offices. The Supreme Court has ruled that we are performing a constitutional function. There is no distinction as to proprietary business under federal law as there is in the states. It's either constitutional and can't be taxed, or it's unconstitutional. We're constitutional and can't be taxed."<sup>22</sup>

Another attempt to tax the T.V.A. directly was made by the Hamilton county equalization board in Tennessee, and consisted of a forced assessment of two million dollars on its personal property located within the county. As in the case of the Georgia laws, no attempt was made to enforce the measure, and the controversy ended after the county equalization board abandoned the proposed levy, declaring that the necessity for the assessment was obviated by legislation then pending in Congress.<sup>23</sup>

*Existing Tax Replacement Provisions.* As the impending tax losses to county and state governments became pressing, opposition to the T.V.A.'s replacing the losses became centered on a criticism of the whole T.V.A. program, and especially of its utility as a yard-stick to determine power rates. If lost taxes were to be replaced, contended many, it should be done by the beneficiaries of the program, not by the taxpayers of the whole nation, who had already spent large sums on the project and who themselves derived no benefit. On the contrary, the revenues from T.V.A.

<sup>20</sup> Acts and Resolutions of the General Assembly of the State of Georgia, 1939, Part 1, Title III, Nos. 202 and 203. <sup>21</sup> *Knoxville Journal*, Dec. 21, 1939.

<sup>22</sup> *New York Times*, Dec. 9, 1939.

<sup>23</sup> See the *Chattanooga Free Press*, July 30, 1939; *Chattanooga Times*, July 31, 1939; and *Knoxville News Sentinel*, Aug. 3, 1939.

should be used to amortize the cost of the undertaking. Moreover, alleged tax-free competition from the federal government was bitterly criticized, and the charge was frequently made that the tax loss proved that government hydro-electric projects could not produce electricity more cheaply than private companies if the rates provided for the same tax payment as private companies.<sup>24</sup>

The T.V.A. and its proponents denied these criticisms and declared that power rates were sufficient to cover all taxes previously paid by the private companies. The recoverable taxes on the distribution facilities amounted to approximately 58 per cent of the total loss, and their recovery was entirely a matter of state legislative action.

Moreover, the wholesale rates at which the Authority sells to retail distribution systems contain a margin of approximately 15 per cent above all costs of production and transmission. This margin is sufficient to cover the taxes formerly levied on facilities acquired directly by the T.V.A., and the issue is simply whether or not it should be so used. The T.V.A. program is multi-purpose, and the cost is allocated not only to power production but also to navigation and flood control. Of the three, power alone returns revenues, and the 15 per cent loading in wholesale rates over all costs of production might be used as payments to the states in lieu of taxes or returned to the national treasury to liquidate the costs allocated to navigation and flood control, as well as to power. The T.V.A. act, as originally written, provided that this margin be returned to the national treasury. However, navigation and flood control are matters of national concern, and traditionally have been paid for by the national government alone.<sup>25</sup> Therefore, continued the proponents of T.V.A., it is proper that the margin in the wholesale rates should amortize only the full cost of power production and replace the taxes formerly levied on property acquired by the T.V.A. The costs of navigation and flood control, however, should not be saddled on electrical consumers of T.V.A. power.<sup>26</sup>

To aid in the dislocation of taxes that were lost, the T.V.A. was already paying the states of Tennessee and Alabama five per cent of its gross power revenues, in accordance with Section 13 of the Tennessee Valley Authority Act of 1933.<sup>27</sup> The amount paid in each state was based on the sale of power generated therein, and the percentage might be changed by the board of directors with the approval of the president as often as once

<sup>24</sup> *Chicago Herald-Tribune*, Apr. 2 and Aug. 2, 1939; and *Journal of Commerce* (Chicago), Apr. 6, 1939.

<sup>25</sup> Letter of H. A. Morgan, chairman of the T.V.A. board of directors, to the *New York Times*, Dec. 20, 1939, and testimony of W. C. Fitts, Jr., T.V.A. counsel, at the hearing on the Independent Offices Appropriation Bill for 1941, *op. cit.*, pp. 1705 ff.

<sup>26</sup> *Louisville Courier-Journal*, Jan. 4, 1940.

<sup>27</sup> May 18, 1933, Chap. 32, Sec. 13, 48 Stat. 66.



every five years. It was estimated that as T.V.A.'s revenues increased, the act would yield enough to replace virtually all the loss incurred directly from the T.V.A.'s acquisition.

The act was inadequate in many respects, however, although alleviating the situation. For one thing, the maximum production of T.V.A. was not expected for some years, and while the hardship on the governments was temporary, it was nevertheless severe. School budgets and governmental services in some counties depended vitally on existing revenues. Another defect was the application of the act only to Tennessee and Alabama, the two states foreseen as affected by the T.V.A. program. Fannin county, Georgia, one of the worst sufferers, could thus obtain no redress; nor could various other counties in Mississippi, North Carolina, and Kentucky, either already losing taxes or expecting to do so. Even as between Tennessee and Alabama, moreover, the act worked obvious discrimination. The provision that the amount of taxes replaced should be based on the place of generation of power favored Alabama, as most of the power was generated in that state. The tax displacement, on the other hand, was arising mainly in Tennessee, where the Authority had acquired extensive generating and transmission facilities formerly paying taxes. Still another defect of the original act was its failure to assure any relief for the counties, the real sufferers. The payments were made to the states, which kept the entire amounts, while the counties, much less able to replace the losses, received no assistance. Finally, the five per cent applied only to proceeds from the sale of power generated at hydro-electric plants and did not include power produced at steam plants.

*The Norris-Sparkman Amendment and Its Operation.* After lengthy study of the situation, the Authority decided that it should assume the responsibility of replacing the ad valorem property tax losses allocable to itself by payments in lieu of taxes to the states and counties. Accordingly, it supported in Congress the Norris-Sparkman amendment to the Tennessee Valley Authority Act,<sup>28</sup> introduced to extend the scope and amount of payments formerly authorized. The amendment provided that payments in lieu of taxes should be made to the states and counties affected by the power operations of the T.V.A. The payments, based on the gross proceeds from the sale of power, would begin at 10 per cent for the fiscal year 1941 and decrease as follows: 9 per cent, 1942; 8 per cent, 1943; 7½ per cent, 1944; 7 per cent, 1945; 6½ per cent, 1946; 6 per cent, 1947; 5½ per cent, 1948; and 5 per cent for 1949 and each succeeding year. As the rate of payment declined, it was expected that the increased production would yield greater revenues, so that the payments made would be substantially the same. One-half of the payment would be apportioned among the states

<sup>28</sup> Sec. 39 of the Emergency Relief Appropriation Act for 1941 (Public Resolution No. 88, 76th Cong., 3rd Sess., Chap. 432).

on the basis of the amount of power consumed in each state, and the other half on the basis of the value of the power property located in each state. The minimum annual payment to the states and counties would not be less than the state and county ad valorem property taxes formerly levied on the power properties of T.V.A., and on the portion of the reservoir lands allocable to the production of power.

According to T.V.A. estimates, made after several months of operation of the amendment,<sup>29</sup> payments by the Authority during the fiscal year 1941 in lieu of taxes will exceed by \$417,000 all former property taxes levied by the state and local governments on the utility properties and reservoir lands purchased by the Authority. The former losses by states and the amount of T.V.A. payments are given in the following table:

	<i>Property Taxes Formerly Collected on Power Properties and Reservoir Land Pur- chased by T.V.A.</i>	<i>Estimated Payments by the Authority in Lieu of Taxes for the Fiscal Year 1941</i>
Alabama	\$ 81,000	\$ 356,000
Georgia	65,000	65,000
Kentucky	8,000	35,000
Mississippi	51,000	50,000
North Carolina	6,000	38,000
Tennessee	917,000	1,001,000
Total	\$1,128,000	\$1,545,000

Furthermore, the sums collected by the distribution systems for the purpose of replacing state and local property taxes will exceed by \$232,000 such taxes formerly levied on the properties purchased by the systems, shown by the following table:

	<i>State and Local Property Taxes Formerly Levied on Property Purchased by the Distribution Systems</i>	<i>Amount Collected by the Distribution Systems to Replace These Taxes</i>
Alabama	\$ 9,000	\$ 111,000
Georgia	6,000	2,000
Kentucky	—	2,000
Mississippi	34,000	77,000
North Carolina	—	2,000
Tennessee	1,454,000	1,541,000
Total	\$1,503,000	\$1,735,000

The total payments in lieu of taxes by the T.V.A. and the distribution systems on all property acquired, including the reservoir lands, are estimated to be \$3,280,000. This is an excess of \$649,000 over all former property taxes, estimated at \$2,631,000, and is almost enough to replace the

<sup>29</sup> News Release, Sept. 17, 1940.

\$700,000 of state business taxes allocable to the public power program. The payments by the T.V.A. under the Norris-Sparkman amendment and by the distribution systems are thus estimated to replace virtually all the taxes formerly collected by the local and state governments, and the tax dislocation controversy has been settled. Attention is now focused on the large financial benefits from the T.V.A. program in the form of an estimated \$9,000,000 annual saving by the Valley in lower power rates and \$4,000,000 annual net profit by the distribution systems, and also on navigation, flood control, soil conservation, and defense activities that will benefit the region and the nation.

Very significant as a result of the tax problem is the interest concentrated on several greatly needed governmental reforms. One of the factors largely responsible for the situation is the existence of many poor, sparsely-populated counties parasitically living on power properties that happened to be located within their borders. Since the problem arose, three commendable acts have been passed by the Tennessee legislature authorizing and facilitating the consolidation of counties.<sup>30</sup> Although no consolidation has been effected to date, considerable interest has been aroused which may yet stimulate action to modernize the organization and functions of county government.<sup>31</sup> One function shown by the situation to be sorely needed is the use of adequate budgeting, accounting, and reporting practices by counties.<sup>32</sup> Tennessee is among the states that would benefit from such a reform, and bills to establish sound county fiscal policies will be introduced in the 1941 session of the legislature. Designed especially for counties receiving in-lieu-of-tax payments from the T.V.A., the provisions are expected to extend to other counties also. The tax replacement controversy may thus be instrumental in promoting governmental reform in Tennessee and other states in the Valley.

ALEXANDER T. EDELMANN.

*University of Tennessee.*

<sup>30</sup> *Public Acts of the State of Tennessee*, 1939, Chaps. 224, 225, and 226.

<sup>31</sup> See M. H. Satterfield, "Tennessee Counties Stand Pat," *National Municipal Review*, Vol. 29, p. 26 (Jan., 1940).

<sup>32</sup> See W. H. Read, *Accounting Manual for the Counties of Tennessee* (University of Tennessee, July, 1938), p. 8.

## INTERNATIONAL AFFAIRS

**International Law and the Totalitarian States.** International law has assumed that states are independent and free to vary their national cultures and institutions at will. It permits them to organize their domestic economy, culture, opinion, and polity in a totalitarian way if they see fit. In fact, however, international law developed among states which had many cultural characteristics in common. It was originally the law governing the relations of the Christian states of Europe, all with a tradition reaching back into medieval Christendom and classical antiquity, and united by practices of maritime trade, and by commercial, religious, and educational institutions. The potential totalitarianism which the law allowed was not in fact realized because of moral and practical inhibitions. Governments wished to observe the universal *mores*, and even if they had not, they lacked the technical, administrative, and political means which modern despots have utilized so effectively to override these *mores* in the interests of concentrated power.

As the family of nations expanded, the principles implied by the European traditions and institutions were accepted by the non-Christian states overseas. What vigor international law has had, in spite of the theoretical inconsistency between the ideas of sovereignty and of subjection to law, has been due to the practical difficulties in the way of despotism and to the common elements in the culture of the nations and in the ethics and interests of their peoples. States with certain common needs and traditions naturally thought of similar solutions to emerging problems and agreement often resulted, either tacitly by custom or expressly by convention. Supported by these standards recognized by all civilized men, international law was able to subject the exercise of national sovereignty to important limitations.

Limitations arose from the need to protect agencies of international intercourse if peaceful relations were to exist at all. Immunities of diplomatic officers, of consuls, and of public vessels have been of long standing.

The needs of agriculture, industry, and trade tended to support the customary separation of the peasants and merchants from the nobility, the army, and the public officials. Customary rights of foreign merchant vessels on the high seas and in ports, and conventional rights of transit in the maritime belt, in international straits, rivers, and canals, and in the air; conventional rules for facilitating easy communications by post, telegraph, and radio; privileges of consular establishment and conventional rights of foreign merchants, resident in the country, have developed in international law for the protection and encouragement of international trade in time of peace.

The Christian doctrine of the autonomy of the individual soul, strength-

ened by the Reformation, by the seventeenth century doctrine of natural rights, and by modern humanitarianism, imposed practical limitations upon the absoluteness of territorial sovereignty. The state, according to these principles, ought to respect the fundamental religious, property, and personal rights, both of its subjects and of resident aliens. The institution of diplomatic protection and numerous arbitrations in the nineteenth century gave a legal status to these principles. Freedom of opinion and of cultural expression gradually came to be accepted as rights, and in the nineteenth and twentieth centuries international conventions began to require respect for these rights, especially in the case of minorities and of aborigines. Principles of humanitarian intervention to compel states to treat their own subjects with a minimum standard of decency were supported by many precedents of the nineteenth century.

These basic concepts of civilization, separating commerce from government and insisting on some respect for the individual, had an influence in moderating the practices of war beyond the limitations imposed by conceptions of chivalry and military honor accepted in the Middle Ages. Limitations were imposed on the confiscation of neutral and enemy property at sea. Enemy property and credits in the national domain were to be respected. Property in occupied areas was to be respected so far as military necessity permitted. Enemy civilians were to be spared. Some humane consideration was due even to the armed forces of the enemy. Furthermore, the medieval tradition of distinguishing between just and unjust war, and the modern distinction between aggression and defense, have been reflected in conventional rules and institutions limiting resort to war.

The totalitarian state constitutes the extreme development of the ideas of political sovereignty and of cultural nationalism. It is an evolution of the theory of territorial sovereignty toward the complete exclusion of the historic, religious, economic, cultural, and humanitarian inhibitions which had, in practice and in law, held sovereignty in check.

The totalitarian state is in principle unlimited in its power over its domain, its officials, its nationals, and its culture. It has realized its principles in practice by a planned economy organizing resources for power rather than for welfare, a scapegoat polity supporting internal solidarity by external enmities, a sovereign legislation subordinating individual rights to "reason of state," and a militarized administration controlling action by efficient organization of armed force. Its policy has been to exalt the national culture to a position of moral superiority over other nations and peoples. As a consequence of these principles, practices, and policies, the totalitarian state's respect for the territorial boundaries, cultural claims, and economic interests of other states cannot rest on moral principle, but only upon the military power of those states to defend themselves. In

principle, each totalitarian state rules the world and everything in it. According to John W. Burgess, quoting German ideas on the subject in 1890: "From the standpoint of the idea, the state is mankind viewed as an organized unit. . . . The territorial basis of the state is the world, and the principle of unity is humanity."<sup>1</sup> The totalitarian state is the effort to realize this idea in the shortest possible time by the ruthless use of political, economic, and military power.

While the theorists of Nazi, Fascist, and Communist international law have not adhered strictly to this logical development of their political gospel, the trend of their writings has been in this direction. They have sought to free sovereignty of legal restrictions, although they have moderated the logic of their ideology by considerations of the political expediency of the moment.<sup>2</sup>

I propose to consider, not the theory, but certain practical influences of totalitarianism upon international law, especially upon (1) sovereign immunities, (2) commercial rights, (3) individual rights, and (4) rights with respect to war.

(1) The rise of totalitarianism has had the effect of limiting the immunities from national jurisdiction of foreign public agencies and properties within the domain. Liberal states which continue to distinguish between business and governmental functions have not been inclined to grant immunity to ships *engaged in commerce* or to commercial agents, even though such ships or agencies belonged to foreign governments. The wide extension of public ownership of merchant shipping not only among the totalitarian but among other states had made the issue important. Furthermore, the tendency of totalitarian governments to utilize consulates and embassies as centers of subversive propaganda has rendered them objects of suspicion, and there has been a tendency to relax the customary immunities of these institutions in order to permit the receiving state adequately to investigate and to protect its interests. It is likely that international law will develop a conception of *legitimate public functions*, and will grant the customary immunities only to agencies of foreign governments confining their activity to such functions.<sup>3</sup>

<sup>1</sup> J. W. Burgess, *Political Science and Constitutional Law* (Boston, 1890), p. 50.

<sup>2</sup> Laurence Preuss, "National Socialist Conceptions of International Law," in this REVIEW, Vol. 29, pp. 595 ff.; John Herz, "The National Socialist Doctrine of International Law," *Political Science Quarterly*, Vol. 54, pp. 536 ff.; Virginia Gott, "National Socialist Theory of International Law," *American Journal of International Law*, Vol. 32, pp. 704 ff.; John N. Hazard, "Cleansing Soviet International Law of Anti-Marxist Theories," *ibid.*, 294 ff.; T. A. Taracouzio, *The Soviet Union and International Law* (New York, 1935).

<sup>3</sup> See Brussels Convention on Immunities of State-owned Ships, 1926; Harvard Research in International Law, "Competence of Courts in Regard to Foreign States," *American Journal of International Law*, Vol. 36 (Supplement), pp. 560-569.

(2) By controlling foreign trade and credits and reducing commercial relations to a bilateral, governmental basis, totalitarian states have tended to render obsolete the conventional law concerning most-favored-nation treatment, and have destroyed the normal confidence of states that their merchants could have access to foreign sources of raw materials and to foreign markets. These practices have also tended to destroy the security of international loans and of property abroad, even in time of peace. The consequence of this obliteration of general confidence in the world trading system has been to stimulate efforts of all states to make the national economy self-sufficient. If the totalitarian states have not sufficient resources to achieve this end within their existing territory, this policy has induced efforts to expand their frontiers. Totalitarian economy has thus destroyed not only the rule of law, protecting international commerce, but also the rule of law protecting frontiers, and has reduced international relations to a jungle condition.<sup>4</sup>

(3) Totalitarianism has emancipated itself from all respect for the individual. He is a cog in the wheel of state, an instrument of state policy with no inherent rights of his own. The consequence of this has been a widespread elimination of the rule of law for protection of the property and civil rights of the resident alien and expulsion of nationals of unwanted race or opinion, creating a problem of refugees and statelessness. Totalitarian governments have imposed national censorships and controls upon all agencies of international communication, thus cutting off their nationals from all contact abroad, except such as they deem desirable. The consequence of this cultural isolation has been the creation of a fanatical national sentiment within, and a morbid suspicion and hatred of foreign nations, except those for which the totalitarian government desires friendship. No higher considerations of humanity qualify the exercise of totalitarian sovereignty. Each state is a wolf to the others. While this conception of international relations was implicit in the Machiavellian view of the state out of which modern international law grew, Christian, humanitarian, and international ideas and institutions have in the past prevented realization of the concept and have given a reality to international law, perhaps without sufficient comprehension of the inadequate philosophical and political foundations upon which that law rested. Totalitarianism, however, has unmasked the inadequacy of these foundations and has swept away the customary privileges of aliens, minorities, aborigines, and citizens when confronted by the rapacity of the totalitarian sovereign.<sup>5</sup>

(4) In the law respecting war, the influence of totalitarianism has been

<sup>4</sup> Lionel Robbins, *The Economic Causes of War* (London, 1939), pp. 98 ff.

<sup>5</sup> E. F. M. Durbin and John Bowlby, *Personal Aggressiveness and War* (New York, 1939), pp. 126 ff.

most important. The movement against war, which developed particularly in the nineteenth century, though its roots go back as far as the Christian tradition, has been repudiated. To the totalitarian state, war is an instrument of policy to be used whenever the government deems it expedient. Furthermore, totalitarian war, militarizing the whole economy of the nation for its prosecution, cannot respect civilians or private property. They are important elements of the enemy's war efforts, and modern technology permits attack upon them from the air and on the sea. The *temperamenta belli* which Grotius urged as expedient and humane qualifications of total war in the seventeenth century are, in the practice of modern belligerents, no longer sanctioned by either expediency or morality. The laws of war and neutrality have little place in totalitarian war except as propaganda devices to permit the aggressor to conquer his victims one at a time. Totalitarian war bombs the enemy's civilians indiscriminately and destroys without warning all shipping, enemy and neutral, proceeding to enemy ports. It even regards property in occupied areas as subject to confiscation, and does not hesitate to drive out populations of conquered territory, giving their homes and lands to nationals of the conqueror. Familiar distinctions of customary international law between combatant and non-combatant, between enemy and neutral individuals, have been swept away. Under these conditions, there is no chance of negotiating peace. Totalitarian war is aimed at the annihilation of the enemy, not at a new adjustment of international relations.<sup>6</sup>

In spite of these tendencies promoted by totalitarian governments and by the logical application of the totalitarian ideology, there is a possibility that in practice a stable balance of power might in time be achieved even by totalitarian governments. Such a condition might lead even totalitarian states to accept, on grounds of expediency if not of principle, much of traditional international law. It is to be recalled that Soviet totalitarianism began with principles of world revolution; but during the comparative peace of the 1920's the Soviet government accommodated its practice to its necessities and accepted much of international law. In fact, in its numerous non-aggression pacts and its acceptance of the doctrine of collective security upon entry into the League of Nations in 1934, it went further than other states in its willingness to confine its exercise of sovereignty to its existing territory.<sup>7</sup> In principle, however, totalitarianism and international law are incompatible, and the purely expedient basis of the Soviet's policy was manifested in its attack on Finland and other countries when the opportunity offered.

Effective law is impossible without some basic standards held in com-

<sup>6</sup> Hans Speier and Alfred Kahler (eds.), *War in Our Time* (New York, 1939).

<sup>7</sup> Malbone W. Graham, "The Peace Policy of the Soviet Union," in Samuel N. Harper (ed.), *The Soviet Union and World Problems* (Chicago, 1935), pp. 125 ff.



mon by a substantial majority of those subject to it. Totalitarianism both in principle and practice rejects all standards above the legislation of the totalitarian government. Governments professing such a doctrine cannot be reliable subjects of law, and for this reason international law has always been a weak law. When governments practice such professions, international law disappears altogether.

The relation of totalitarianism to international law is therefore one of incompatibility. If totalitarianism triumphs in the present war, international law will suffer a severe decline from which it may not recover. The situation may be similar to that at the time of Caesar and Augustus, when Roman arms triumphed over the international law which existed in the Hellenistic period. The modern Caesars have not veiled their intentions—Mussolini avows his inspiration from ancient Rome, as Hitler avows his inspiration from the medieval Empire. Both assume a hierarchical order of the world as a whole, and repudiate the concept of equal states subject to law.

There can be no doubt that national sovereignty has overridden itself. The economic and cultural requirements of the world demand that sovereign states be subordinated to a world order as the feudal principalities of four centuries ago were subordinated to the national orders. The issue is whether they shall be subordinated by conquest and empire, in which local autonomies and individual rights are denied in principle, or whether they shall be subordinated by the logical development of the international law of the past century. Such a development would proceed toward a federal order in which inherent rights of individuals, of nations, of regions, and of the world as a whole will be coördinated by appropriate legal and political institutions, assuring respect for all. Those who believe in democracy, in nationality, and in international law cannot hope to turn back to the exaggerated conceptions of national sovereignty. They must confront the imperial design of totalitarianism with a positive program for rehabilitating the standards of individual and national rights, for establishing institutions to secure and develop these standards, and for supporting these institutions by a sustained and general sentiment of world citizenship.

QUINCY WRIGHT.

*University of Chicago.*

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

The thirty-seventh annual meeting of the American Political Science Association will be held in New York City, December 28-31, with headquarters at the Pennsylvania Hotel. (The American Society for Public Administration will meet in the same hotel, and its program will start on December 30). Inasmuch as the work of the Program Committee (Professor Francis G. Wilson, chairman) was begun at the close of the meeting last year, the program is now well developed, although changes are to be expected owing to the peculiarly fluid situation in both domestic and international affairs. As in recent years, a large number of round tables and section meetings are scheduled. The increase seems necessary because of the large attendance at the meetings, and because of the diversity of interest of members of the Association.

Distinguished speakers for three luncheons and one dinner meeting have been invited. Because some of these have been unwilling to commit themselves at the present time, it seems inadvisable to give their names. The program of the Association will open on Sunday evening, December 28, with a joint general session with the American Society for Public Administration devoted to the problems of war financing, with speakers selected from the national administration and the Treasury Department. In general, the emphasis in the program falls in the field of national defense, and the relation of domestic problems to the issues of international affairs. Round tables and sections have been scheduled to hold sessions simultaneously during the meeting periods.

The following joint round tables with the Public Administration Society, with the chairmen listed, will meet on Monday and Tuesday mornings: (1) National Defense Administration, Arthur N. Holcombe (Harvard University); (2) The State Legislature, Roger V. Shumate (University of Nebraska); (3) New Problems of Local Government, William S. Carpenter (Princeton University); (4) Personnel Administration, J. Alton Burdine (University of Texas); (5) Problems of Government in New York City, Wallace S. Sayre (Civil Service Commission, New York City); (6) Judicial Administration, J. A. C. Grant (University of California). In addition, there will be two joint section meetings: War Financing, Simeon E. Leland (University of Chicago) and Rowland A. Egger (Director of the Budget, Virginia), and Municipal Government, Joseph D. McGoldrick (Comptroller, New York City).

Section meetings sponsored by the Association include the following: (1) Government and Business, James W. Fesler (University of North Carolina); (2) Public Law, Charles Aikin (University of California); (3)

Political Parties, Claudius O. Johnson (Washington State College); (4) The Pacific Area, George H. Blakeslee (Clark University); (5) Latin America, Ben M. Cherrington (University of Denver); (6) American Foreign Policy, Walter R. Sharp (College of the City of New York); (7) Trends in European Government, Robert K. Gooch (University of Virginia); (8) International Law, Lawrence Preuss (University of Michigan); (9) The Grand Strategy of National Defense, Harold H. Sprout (Princeton University); (10) Citizen Organization, Roy V. Peel (Indiana University); (11) Political Theory, Thomas I. Cook (University of Washington); (12) The Bill of Rights, Everett S. Brown (University of Michigan); and (13) Archives as Material for Research in Political Science, Arnold Brecht (New School for Social Research). Additional section meetings are planned jointly with the Association of American Geographers and possibly the American Association for Labor Legislation.

Another series of round table meetings should be noted, as follows: (1) Congress and the Formation of Policy, George B. Galloway (National Economic and Social Planning Association); (2) Civil-Military Relations in a Democracy, Pendleton Herring (Harvard University); (3) Problems of Teaching in Political Science, John A. Vieg (Iowa State College); (4) The Organization of Peace, Clyde Eagleton (New York University); (5) Public Opinion, Charles W. Smith, Jr. (University of Alabama). The National Council for the Social Studies will hold a breakfast meeting on December 30, and will participate in a round table following on Problems of Teaching in Political Science.

Among the breakfast meetings should be noted that of the women members of the Association under the chairmanship of Edna R. Fluegel (College of St. Catherine), a meeting of editors of social science journals under the chairmanship of Robert J. Harris (Louisiana State University), meetings of the Pennsylvania and Midwest groups of political scientists, and a meeting of those interested in the Latin American field under the chairmanship of Russell H. Fitzgibbon (University of California at Los Angeles).

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At the University of Illinois, Professor John M. Mathews has been appointed chairman of the department of political science, for a period of two years, in succession to Professor John A. Fairlie, retiring this month with the title of professor emeritus.

Miss Margaret Ball will be on leave from Wellesley College during the coming year while holding a Social Science Research Council fellowship for work in Washington and Latin America.

On June 18, Dr. Ernest S. Griffith, director of the Legislative Reference Service of the Library of Congress, addressed a joint group meeting of

the Special Libraries Association at Hartford, Connecticut, on the work of the Service over which he presides.

Dr. Maxim von Brevern, of the University of Washington, has been granted leave of absence for the autumn quarter to pursue special work under the auspices of the Institute for Advanced Studies at Princeton.

At the University of Tennessee, Dr. Kenneth O. Warner, formerly of the University of Arkansas, has been appointed professor of political science and chairman of the department.

Dr. Edwin D. Dickinson, dean of the school of jurisprudence at the University of California, has been appointed special consultant to the U. S. Department of Justice on international law and related matters.

After a period of service as assistant to the Secretary of Agriculture, specializing in war and defense coördination in the Department and other federal agencies, Dr. James L. McCamy will return to Bennington College in September.

At Kent State University, Miss Mona Fletcher has been promoted to an associate professorship.

At Swarthmore College, Dr. Vernon A. O'Rourke, of Union College, has been appointed to an assistant professorship and Dr. Arnaud B. Leavelle, of the University of California at Los Angeles, to an instructorship. Professor J. Roland Pennock has been advanced to an associate professorship; and Dr. Bryce Wood, of Columbia University, will conduct a seminar in the international field throughout the next academic year.

Professor Clyde Eagleton, of New York University, delivered the commencement address in June at Austin College, Texas, and was awarded the honorary degree of doctor of laws.

The Citadel, Charleston, S.C., has created a separate department of political science and has appointed Dr. James K. Coleman professor in charge.

At Western Reserve University, Dr. Wilbur W. White has been promoted to a professorship in the department of political science and appointed dean of the graduate school. Dr. Eleanor F. Dolan, of New York University, has been given an appointment as assistant professor in the same department.

The Social Science Research Council has awarded Professor Oliver P. Field, of Indiana University, a grant-in-aid for a study of business, administration, and local government in a national defense "boom town," and Miss Marion D. Irish, of Florida State College for Women, a grant for a study of the Southern labor movement in 1930-40.

On May 14, Professor Joseph R. Starr, of the University of Minnesota,

appeared as a representative of the American Association of University Professors at a hearing before a subcommittee of the House Judiciary Committee in Washington, and argued for the exemption of teachers from the Hatch Political Activities Act. His prepared statement, used on this occasion, will be published in an early issue of the *Bulletin* of the American Association of University Professors.

A Regional Institute on Employment Security was held May 12-17 at the Center for Continuation Study at the University of Minnesota. Professor Lloyd M. Short was chairman of the faculty planning committee, and both he and Professor A. N. Christensen were members of the staff of the Institute.

The chair which Professor George S. C. Benson, of the University of Michigan, will assume at Northwestern University next month is one in public administration. During the summer, Professor Benson is serving as consultant to the personnel division of the Office of Emergency Management.

Professor F. A. Hermens, of the University of Notre Dame, is spending a portion of the summer in Mexico, where he is engaged upon a study of Latin American constitutionalism.

Professor J. R. Hayden, of the University of Michigan, is teaching at the University of Washington during the current summer quarter.

Dr. Hersch Lauterpacht, Whewell professor at Cambridge University, is to be Mary Whiton Calkins Visiting Professor at Wellesley College next year. He will give lectures in international politics and international law.

Professor L. V. Howard, of the University of Maryland, taught at the University of Alabama during the recent summer session.

At the University of Minnesota, Drs. Joseph R. Starr and Asher N. Christensen have been advanced to the rank of associate professor.

Professor Lennox A. Mills, of the University of Minnesota, taught in the recent summer session at the University of California at Berkeley.

Professor John W. Manning, who, after a year with the National Institute of Public Affairs in Washington, expected to return this fall to the University of Kentucky, has been called into extended active duty in the personnel research section of the personnel bureau of the Adjutant General's Office, with permanent station in Washington.

Dr. Victor Jones, of the bureau of public administration at the University of California, has been made assistant professor of political science at the Illinois Institute of Technology.

Professor Leonard D. White, of the University of Chicago, taught at Stanford University during the 1941 summer session.

Mrs. Frances Reinhold Fussell, on leave from Swarthmore College, is serving in Washington as an assistant to Professor William Y. Elliott on government stockpiling of the strategic and critical raw materials necessary for the war effort, and on shipping priorities to insure the effective execution of the stockpile and public purchase program.

Messrs. Elliott P. Roberts and Richard Bigger, of the University of Wisconsin, and Robert S. Avery, of Northwestern University, have been appointed personnel assistants on the staff of the Tennessee Valley Authority, and Mr. Paul Haaga, of Harvard University, has joined the Authority's employment division.

Mr. William H. Young, who completed his graduate work at the University of Wisconsin during the summer, has been appointed instructor in political science at the University of Pennsylvania.

At the University of Michigan, the following persons have been added to the staff as instructors: Dr. John A. Perkins, Dr. William I. Cargo, and Dr. Samuel D. Marble.

Dr. Hans J. Morgenthau, of the University of Kansas City, has received a grant from the Penrose Fund to study the relationship between the political philosophy of liberalism and foreign policy, with special reference to the basic ideas of pre- and post-World War foreign policy.

Dr. Bernard Brodie has concluded his Carnegie Corporation fellowship at the Institute for Advanced Study and has been appointed instructor in political science at Dartmouth College, where he will offer a new course on "Modern War Strategy and National Policies."

Miss Eleanor Frances Dean, of New York University, has been appointed assistant professor of political science and dean at Flora Stone Mather College, Western Reserve University.

North Park College, Chicago, recently announced the appointment of Mr. Walter J. Moberg, instructor in political science, as dean of the junior college and the academy.

The Library of Congress has assembled in an alcove in the main reading room a collection of two hundred books on the subject of democracy. Other works of the kind will be added as published.

Persons recently receiving their doctor's degree at the University of Chicago have been appointed as follows: William T. R. Fox, instructor at Princeton University; Maure Goldschmidt, instructor at the College of the City of New York; David B. Truman, instructor at Cornell University; and David M. Levitan, assistant personnel officer, N.Y.A. for Illinois.

Dr. Marshall E. Dimock, Department of Justice, who has been on leave from the University of Chicago for the past three years, has resigned from that institution, effective July 1, and will continue with his administrative work in Washington. At the end of the summer, he will lecture for two weeks at Stanford University and the University of California at Los Angeles on the relation between government and business, as a part of the Short Course of the American Institute of Public Relations. During the fall he will give a series of lectures at the School of Law of New York University on the general subject of administrative law aspects of immigration and naturalization.

Dr. Blaine F. Moore, since 1922 assistant manager of the finance department of the U. S. Chamber of Commerce, died in Washington on June 15. During an earlier teaching career, he served as instructor in government at the University of Michigan in 1909-10, assistant professor of political science at George Washington University in 1910-13, professor of political science and chairman of the department at the University of Kansas in 1915-21, and professor of political science at the American University in 1921-22.

Dr. A. S. White, for many years head of the department of government and citizenship at the University of New Mexico, died on December 28, 1940. Professor Thomas C. Donnelly has been appointed to succeed him as head of the department. Mr. V. E. Kleven, instructor in government, has been appointed assistant professor, and Dr. Frank A. Jonas, assistant professor of political science at the University of Southern California, has been brought to the department as an assistant professor, beginning September, 1941. Professor J. Lloyd Mecham, of the University of Texas, was a visiting professor in the department during the summer of 1941.

The Connecticut Valley Political Science Association held a meeting at the University of New Hampshire on May 10. Among other features was an address on "The Progress of Interstate Coöperation in New England" by Mr. Wayne D. Heydecker, regional representative, Council of State Governments.

A Public Affairs Institute has been inaugurated in Kansas City, Missouri, under the sponsorship of the civic research bureau of the Citizens Council and the directorship of Professor Shepherd L. Witman, of the University of Omaha. The Institute is directed toward a city-wide program of citizen discussion of civic affairs.

Western Illinois State Teachers College at Macomb held a state summer educational conference, June 24-28, on citizenship. Speakers included Dr. Hugh M. Cole, of the University of Chicago, Dean Donald DuShane, Jr., of Lawrence College, and Professor Franklin L. Burdette, of Butler

University, executive secretary of the National Foundation for Education in American Citizenship.

The program of the fourth Institute of Public Affairs held at the University of New Hampshire on July 8 was devoted to the general subject of governmental personnel in New Hampshire. Under the general chairmanship of Professor Thorsten V. Kalijarvi, one session considered the elective officials and another the appointed officials.

The program of the Institute of Public Affairs held at the University of Virginia from June 23 to July 4 provided for two series of conferences—one on "National Affairs: The Preservation of American Democracy," and the other on "Foreign Affairs: The Obligations of the United States as a World Power." Discussion leaders included Messrs. Ernest K. Lindley, Rexford G. Tugwell, and Brooks Emeny, and Colonel Herman Buekema.

In an effort to create sounder public opinion in New England on questions of Latin American trade and politics as they affect hemisphere defense, Connecticut College held a five-day institute on June 23–28 at which the speakers were Dr. Dana G. Munro, director of the School of Public and International Affairs at Princeton University; Dr. A. Randle Elliott, of the Foreign Policy Association; Dr. Enrique de Lozada of Bolivia, professor of political science at Williams College; Mr. William S. Culbertson, former United States ambassador to Chile; and Dr. Preston E. James, professor of South American geography at the University of Michigan.

The sixth annual Institute of Government was in session at the University of Washington between June 23 and June 28. Dr. Donald Webster, of the University of Washington bureau of governmental research, arranged the program. Among the participants were Mr. Walter H. Blucher, director of the American Society of Planning Officials, and Mr. Albert Lepawsky, director of the Federation of Tax Administrators.

The Graduate Library School of the University of Chicago sponsored an Institute on the Implications of Print, Radio, and Film for Democratic Government, August 4–9. Among the participants were Professor Harold F. Gosnell, of the University of Chicago; Dr. Harold D. Lasswell, specialist in communication research; and Mr. Harold L. Elsten, propaganda analyst, Nationality Section, Immigration and Naturalization Service, Department of Justice.

With "The Post-War World in the Light of the First Great Experiment" as its general theme, an Institute of World Organization will be held on the campus of the American University, Washington, during the



period September 1-13. A morning lecture each day, in nearly all cases by a person long associated with the work of the League of Nations, the International Labor Organization, or the World Court, will be followed by a round table discussion in the afternoon or evening. The undertaking is announced as "a first step toward establishing a permanent center in Washington for the study and dissemination of the principles and method of world organization."

A Conference on the Conservation of Democracy was held at Stanford University on June 26, 27, and 28, in connection with the semi-centennial celebration of the University, with Stanford University, the National Municipal League, the League of California Cities, and the California League of Women Voters participating. Topics discussed in round tables included personnel management, taxation, planning, education for citizenship, citizens' organizations, pressure groups, local governments, and democratic ideals. The principal evening sessions were addressed by ex-President Herbert Hoover and President Clarence A. Dykstra. Other addresses were given by Governor Arthur B. Langlie, Dr. William B. Munro, Dr. Edgar E. Robinson, and Dr. Rudolf Holsti.

The sixth semi-annual meeting of the Metropolitan Political Science Association will be held at Brooklyn College on Friday evening, October 17. President Harry D. Gideonse, of Brooklyn College, will welcome the guests and the principal address will be given by Miss Frieda S. Miller, industrial commissioner of the state of New York, who will speak on "Administration of the Labor Law." Professor George A. Graham, of Princeton University, will preside. Professor Belle Zeller, of Brooklyn College, is in charge of arrangements.

Under the direction of Professor Edward Mead Earle, a number of scholars are engaged at the Institute for Advanced Study in research on various aspects of American foreign policy and national security. Studies published or in progress include *Sea Power in the Machine Age*, by Bernard Brodie; *Changing Conditions of American Security*, by Professor Earle; *Roots of American Foreign Policy*, by Felix Gilbert; *Military Economy and Social Structure*, by Albert T. Lauterbach; *Total War, with Special Reference to Its Psychological Aspects*, by Stefan Th. Possony; *Sea Power*, by Herbert Rosinski; *Military Discipline and Authority*, by Alfred Vagts; and *American Isolationism*, by Albert K. Weinberg. In addition, the group is collaborating with the department of public law at Columbia University on a syllabus and critical bibliography on *War and Defense*, edited by Richard P. Stebbins, and is experimenting with a book of readings on the same subject.

# DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES<sup>1</sup>

COMPILED BY LLEWELLYN PFANKUCHEN<sup>2</sup>

*University of Wisconsin*

## POLITICAL PHILOSOPHY AND PSYCHOLOGY

- Byron Robert Abernethy*; A.B., State Teachers College, 1933; A.M., North Dakota, 1938. *The Concept of Liberty in American Industrial Relations. Iowa.*
- Winston Ashley*; A.M., Chicago, 1938. *The Theory of Natural Slavery According to Aristotle and St. Thomas Aquinas. Notre Dame.*
- William M. Barr*; Litt.B., Rutgers, 1928; A.M., Columbia, 1936. *The Philosophy of Woodrow Wilson. Columbia.*
- Norman W. Beck*; A.B., Chicago, 1923. *Machiavelli as a Political Inventor. Chicago.*
- Dorothy Borg*; A.M., Columbia, 1931. *American Public Opinion in China. Columbia.*
- Julia Helen Chen*; A.B., Hwa Nan College, China, 1928; A.M., American, 1937. *The History and the Divisions of the Chinese Press in the United States. American.*
- Jack G. Day*; B.S., Ohio State; LL.B. *ibid.*; A.M., *ibid.* *The Influence of Roscoe Pound on American Jurisprudence. Ohio State.*
- Karl Wolfgang Deutsch*; Dr. of Law and Political Science, Prague, 1938. *The Economic Factor in Nationalism: A Technique of Enquiry Applied to Some Successors of Central Europe. Harvard.*

<sup>1</sup> Similar lists have been printed in the REVIEW as follows: V, 456 (1911); VI, 464 (1912); VII, 689 (1931); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930); XXV, 798 (1931); XXVI, 769 (1932); XXVII, 680 (1933); XXVIII, 766 (1934); XXIX, 713 (1935); XXX, 811 (1936); XXXI, 772 (1937); XXXII, 796 (1938); XXXIII, 732 (1939); XXXIV, 767 (1940).

Items which appeared in the August, 1940, list are in general classified under the same headings in the present list, and new items have been assimilated to the 1940 classification as far as possible. In cases where classification of an item has been suggested by the institution concerned, the suggestion has been followed. It is believed that each item is listed under one classification only.

The lists printed in the REVIEW are based on information from departments giving graduate instruction in political science. Often dissertations are in progress in departments of economics, history, sociology, etc., which overlap or supplement dissertations in preparation in political science. Attention is called especially to the following lists: "Check List of Current Researches in Public Administration Reported to the Committee on Public Administration, Social Science Research Council" (mimeographed, most recent edition, December, 1940); "Doctoral Dissertations in Political Economy in Progress in American Colleges and Universities," in the *American Economic Review*; "List of Doctoral Dissertations in History Now in Progress at American Universities," Division of Historical Research, Carnegie Institution of Washington; and "Higher Degrees in Sociology," in the *American Journal of Sociology*. Usually one list is published each year. These are in addition to the "List of American Doctoral Dissertations Printed in 1938," the most recent of an annual series published by the Library of Congress.

Names starred are carried over from the 1940 list, no more recent data having been received.

<sup>2</sup> With the assistance of Miss Emily Blenis, hereby gratefully acknowledged.

- Emmet E. Dorsey*; A.B., Oberlin, 1927; A.M., Columbia, 1932. A Critique of Negro Political Leadership: A Series of Social Biographies. *Columbia*.
- Harold L. Elstien*; A.B., Syracuse, 1934. Democratic Tolerance of Anti-Democratic Organization. *Chicago*.
- J. Eldon Fields*; A.B., Kansas, 1934. Neo-Marxian Theories of War and Peace. *Stanford*.
- Gisbert Henry Flanz*; Free School of Political Science, Prague, 1936; Dipl. Sc. Pol., *ibid.*, 1939. The Doctrine of the Separation of Powers; An Historical and Analytical Study in Political Theory and Comparative Constitutional Law. *Princeton*.
- Helen V. Hammarberg*; A.B., California, 1936; A.M., Columbia, 1938. The Theory of an American Legal and Political System. *California*.
- Martin Joseph Hillenbrand*; A.B., Dayton, 1937; A.M., Columbia, 1938. An Analysis of the Concept of Obligation. *Columbia*.
- Byron Marshall Holmes*; A.B., U. C. L. A., 1934; A.M., California, 1939. Political Nativism. *Southern California*.
- Wilfred Horiuchi*; A.B., U. C. L. A., 1933. An Analysis of Interventionist and Isolationist Propaganda in the United States, 1939-41. *Southern California*.
- Robert D. Howard*; A.B., Harvard, 1924; A.M., *ibid.*, 1928. Theories of Conservatism and of Constitutional Democracy in State Constitutional Conventions. *Harvard*.
- Paul Kelso*; A.B. in Ed., Ball State Teachers' College, 1933; A.M., Wisconsin, 1938. Factors Influencing Attitudes toward Municipal Government in Selected Ohio Cities. *Ohio State*.
- Edgar Kemler*; A.B., Johns Hopkins, 1936. The Deflation of American Ideals: A Study of the Response of Traditional Progressivism to the Conditions of the Fascist Era. *Harvard*.
- Eugene E. Koch*; A.B., Pittsburgh, 1932; A.M., *ibid.*, 1935. Political Philosophy of John Selden. *Pittsburgh*.
- Thomas B. Larson*; A.B., Nebraska, 1937; A.M., Chicago, 1938. A History of Ideas Concerning Legislatures and Representation. *Columbia*.
- Luther J. Lee, Jr.*; A.B., Pomona, 1933. Political Significance of Reconstruction for American Nationalism after the Civil War; A Study in American Political Thought. *California*.
- Alfred Maz*; A.B., Delaware, 1933. A Critical Analysis of the Interview Technique in Public Opinion Polls. *American*.
- Milton R. Merrill*; B.S., Utah State College, 1925; A.M., Columbia, 1932. The Public Career of Reed Smoot. *Columbia*.
- Charles R. Nixon*; A.B., Oberlin, 1939. The "Social Myth" in English and American Political Theory. *Cornell*.
- Louis T. Olom*; A.B., Chicago, 1937. The Study of Political Leadership. *Chicago*.
- William Broderick Prendergast*; A.B., Notre Dame, 1937; A.M., *ibid.*, 1938; Lière Licence en Sciences Politiques et Sociales, University of Louvain (Belgium), 1939. American Ideas on the Limits of the Authority of Government. *Chicago*.
- James H. Sheldon*; A.B., Marietta, 1927; A.M., Harvard, 1928. Factors Involved in Determining Public Attitudes toward International Policies. *Harvard*.
- Leo W. Shields*; A.B., Chicago, 1935. The History and Meaning of the Term "Social Justice." *Notre Dame*.
- James Benjamin Stalvey*; A.B., Duke, 1930; A.M., *ibid.*, 1931. The Political Philosophy of Daniel De Leon; A Study in Early American Socialism. *Illinois*.
- Robert L. Stern*; A.B., New York State College for Teachers, 1935. Study of Predictions of Newspaper Columnists in the Newspapers of 1934. *Syracuse*.
- Johan C. TeVelde*; A.B., Calvin, 1934; A.M., Iowa, 1935. The Political Science of John Dewey. *Chicago*.

Audrey G. Townsend; A.B., Southwestern, 1932; A.M., Radcliffe, 1938. The Fabian Socialists as Political Liberals. *Radcliffe*.

\*John Higgins Williams; A.B., Washington and Lee, 1924; A.M., *ibid.*, 1928. The Rise and Decline of the Compact Theory in the United States. *North Carolina*.

#### GOVERNMENT AND POLITICS OF THE UNITED STATES AND ITS DEPENDENCIES

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## BOOK REVIEWS AND NOTICES

*Leviathan and the People.* BY R. M. MACIVER. (Baton Rouge, La.: Louisiana State University Press. 1939. Pp. ix, 182. \$2.00.)

This little book, which represents Professor MacIver's lectures on the Edward Douglass White Foundation at Louisiana State University, is a model of what lectures of this sort should be. It will be especially useful to those who have been looking for a really effective short statement of the case for democracy as against the dictators that meets the criticism so often leveled at democracy, and at the same time takes high ground in a positive statement.

The lectures dealt with the New Leviathan in terms of the rights of a nationalism gradually expanding into industrial society and struggling always to overcome the evil genius of intolerance. But alongside this development is the genius of dictatorship, which is given as acute an analysis as it has had, in simple terms that take into account not only the pressure for planning but the psychological and moral basis on which Nazism and totalitarian systems have been erected. The positive statement for democracy makes one of the most interesting analyses of Ortega y Gasset's case against the mass mind, and then deals with a very fundamental restatement of the democratic position.

Mr. MacIver rests his case primarily on two principles: "(1) Democracy puts into effect the distinction between the state and the community," and "(2) Democracy depends on the free operation of conflicting opinions." In applying these characteristics to the economic order, he refuses to accept the dilemmas posed by Lippmann, and by Max Lerner and others, and points to the various characteristics of an economic system which democracy can actually fit.

Perhaps the most useful and interesting thing in the book comes in the Commentary in Part II, which elaborates some of the ideas barely sketched in the lectures, with an appropriate system of citations and some very interesting and original comments on the effective range of public opinion in a democracy, democracy in political parties, in economic planning, and so on.

If the book has any weakness, it is in that it does not perhaps adequately emphasize the problem of survival with which democracies are confronted as it affects the necessary organization of both economic and political life. The organic as well as the purposive aspects of democracy require emphasis in these times when the question of representative machinery to bear anything like a true general will is put against the harsh background of survival itself. The whole shift of emphasis in the study of democratic institutions, of pressure politics, and of the attempt to create what might be called "pragmatic" rather than "mirror" representation

as a vehicle for responsible government is perhaps necessarily left out of the forefront of these lectures. But they contain a consistent and carefully reasoned message that will be of great aid to those who are seriously concerned to make an honest statement of the democratic case.

WILLIAM Y. ELLIOTT.

*Harvard University.*

*Europe and the German Question.* BY F. W. FOERSTER. (New York: Sheed and Ward. 1940. Pp. xviii, 474.)

*Le Pangermanisme à la Conquête de la Hongrie: Un État dans "l'Espace Vital."* Preface de M. Henri Hauser. (Cahiers d'informations françaises. Paris: Jouve et Cie. 1940. Pp. xiii, 174.)

*Masaryk's Democracy.* BY W. PRESTON WARREN. (Chapel Hill: University of North Carolina Press. 1941. Pp. x, 254. \$2.50.)

These books, so different in topic, in method, and in mode of presentation, have a certain affinity due to the fact that they analyze three different and highly characteristic phenomena of the chaotic period of Europe between the two World Wars—phenomena whose significance will be clearer by contrasting them.

Already in Volume XXXII of this REVIEW (1938) we drew attention to the second edition of a book by the noted German philosopher, educator, and pacifist, F. W. Foerster, published in Luzern in 1937 under the title, *Europa und die Deutsche Frage*, whose considerably remodeled edition the present volume is. Many of the readers of the German edition found Professor Foerster's apocalyptic diagnosis of the German evolution in the nineteenth century too ideologic, presented by the religious fervor of a prophet. Many felt that it was the voice of a persecuted man, driven from his chair and his country, who had lost the right proportions in his historical picture. The few years since the publication of the German volume have demonstrated that its prognostications foretold events more clearly than those of any other political observer.

The diagnosis of Foerster shows a striking analogy with that of Rauschning. Both emphasize the inevitable dialectic movement in the Nazi revolution towards violent expansion and destruction of the present world order. But what for Rauschning was the result of the post-war crisis and of the particular qualities of the Führer and his general staff is in the explanation of Foerster only an episode in the German destiny, and even not its most important one. For him, Hitler and his era are not exceptional phases of German history, but the final culmination of Prussian militarism, which created the absolutistic barrack state, rejecting the common pattern of Western civilization, and proclaimed the unlimited right of the super-state. Viewed from this perspective, Hitler is only the popularizer

and intensifier of the time-old Prussian tradition. In the doctrine of Hitler, the Machiavellism of the princes was supplanted by the Machiavellism of the mob. Out of a doctrine of the cool *Staatsraison*, it has become the passionate dynamism of artificially infuriated masses.

This thesis is elaborated on a broad historical line, following in the main the deep and highly original volumes of Constantin Frantz, the great political antagonist of Bismarck, who immediately after the construction of the German Empire through the blood and iron policy of the Chancellor prognosticated that the militaristic centralization of the new Germany, practically an extended Prussia, would inevitably lead into a state of war between German imperialism and the growing nationalisms of the smaller states. This historical argument is amply supplemented by the author's many-sided experiences in Germany and in the West. The war-guilt problem of the first war assumes here new proportions and new significance. Professor Foerster is convinced that nothing short of a deep moral atonement could change Germany and could persuade the German people, only after a crushing defeat, that the whole policy was bad and that the German destiny does not lie in militaristic expansion but in a peaceful guiding rôle in a Central European federation.

The methods and ideology of the German penetration into the life of the smaller countries is presented with the minuteness of a case history in the work of an anonymous author, which immediately before the collapse of France was published by Professor Hauser of the Sorbonne. It is a detailed analysis of Hungarian history since the time when the Treaty of Trianon disrupted the former unity of the country. With a sharp analysis of the social and economic structure of Hungary, the writer shows the accomplished Machiavellism of the Nazis in preparing the German penetration of Hungary. It was perfectly clear to them that the complete military, diplomatic, and economic domination of the country was absolutely necessary for carrying out their more remote plans toward the rule of Roumania and the Balkans. To avoid unnecessary military operations, they cunningly manipulated three fundamental tendencies of post-war Hungary: the general nationalistic exasperation caused by the dismemberment of the country and heated to the boiling point by a skillful official propaganda; the dominant position of the feudal aristocracy menaced by the agrarian reform in the adjacent countries and eager to regain their former supremacy over the "second-rank" nationality groups; and a widespread popular movement of Hungarian fascism, an artificial creation of Berlin, which threatened the aristocracy with the upheaval of the landless proletariat if the feudal leaders of the country would not obey the German trend and would not follow the extension of the German *Lebensraum*, the expulsion of the Jewry from all their positions in cultural, economic, and political life. Under this threat, and driven by the

desire to regain the lost territories of the Crown of St. Stephen, the governments of Hungary have become increasingly obedient instruments of the Nazi penetration. At the beginning, they consoled themselves that the Nazi domination would be mitigated by the power of the Duce, but later the crushing superiority of the Nazis became apparent. How all this was achieved step by step, how Hungary has become a cornerstone in the German totalitarian system, is convincingly shown by many figures, documents, and excerpts of articles and speeches in the present volume.

The story of *Masaryk's Democracy*, ably and eloquently narrated by Professor W. Preston Warren, takes on a new significance and stands out in sharper relief when contrasted with the totalitarian dynamism of the Nazis and the growing *révanche* ideology of Hungarian feudalism. Amidst the orgy of counter-revolutionary forces and the incompetence and apathy of the Western democracies, President Masaryk and his collaborators embarked upon an experiment which was unique, not only in the Danube basin, but also in almost the whole of Europe. In a time when the leading Western democracies abandoned more and more the spirit of democracy and allowed themselves to be guided by a timid conservatism and a blind policy of appeasement, the democracy of Masaryk recovered the former *élan* of the founders of the democratic system. In spite of its shortcomings and mistakes, it is no exaggeration when Professor Warren describes it as the only daring and promising experiment of the post-war period. This experiment was guided and inspired by the "President-Liberator," who, as teacher and publicist, elaborated a complete system of revised and enlarged liberalism and demonstrated that the essential tenet of socialism can be based only on the permanent values of individual liberty. In a period when Western democracy evinced alarming signs of senility, and when American radical opinion was more and more fascinated by the utopia of the Soviets, Masaryk, both the teacher and the president, did not lose his head for a minute and realized all the dangers of the German situation and the inevitable deadlock in Marxian socialism.

It is strange, and at the same time exciting, to see how this lonely thinker (he was the leader of a small group until the dismemberment of the Hapsburg monarchy) anticipated all those problems with which we are now struggling in America. In the process of "revitalizing democracy," to which now the best energies of this country are devoted, there is not a single topic upon which Masaryk did not concentrate the whole strength of his thought and the inspiring force of his personality. It is a great merit of Professor Warren that he has reconstructed the philosophy and the political legacy of the late President with sincerity and acumen, without making of him—as certain writers have done—the revealer of a new philosophic system. It is evident that his writings in the most varied fields of philosophy, logic, ethics, and sociology do not constitute a rigorous

philosophic system. He remained always more a teacher, a prophet, and before all an inspiring moral personality, than an academic philosopher. In spite of the distance of more than two generations, one feels a strong resemblance between him and Thomas Jefferson—the same universality of culture, the same daring outlook on future possibilities, the same unshaken belief in the masses, the same eagerness for social reforms, and the same loyalty to ultimate values and principles. And though the work of President Masaryk was untimely in a world of blind power politics and was doomed to failure between the millstones of fascism, feudalism, and finance capitalism, yet the very fact that the new synthesis for political action and morality was first elaborated in a small Danubian country by the son of a coachman will give new hope and energy to those who see the ultimate cure for a ruined Europe in the federation of small nations. This is the final significance of Mr. Warren's book, which is by far the best synthesis of the doctrine of Masaryk yet presented in any language.

OSCAR JÁSZI.

*Oberlin College.*

*Argument from Roman Law in Political Thought, 1200-1600.* BY MYRON PIPER GILMORE. (Cambridge: Harvard University Press. Pp. 148. \$2.00.)

It has repeatedly been proved a useful technique, especially in the field of literary history, to analyze the changing character of historical periods in terms of their varied interpretation of an authoritative tradition. The author successfully applies this method to the history of political thought. For such a case study he selects the historical controversy as to whether authority rests with the sovereign prince or with the magistrates, as reflected in the changing interpretation of the authoritative Roman law during the critical period of transition from feudalism to the emerging national state. The body of the book is a detailed interpretation of various texts illustrative of the different historical stages. The study opens with the famous dispute between Lothair and Azo over "merum imperium," and follows up this issue of the structure of political power in its consecutive reception by "the Glossators and Post-Glossators," especially Accursius, Durandus, and Bartolus. It then discusses the "humanists," particularly Budaeus, Alciatus, and Zasius, "the triumvirate of humanistic lawyers"; it further confronts the great contrasting types—Dumoulin, who appropriated the work of Alciatus and applied it to French law and political theory, and the outstanding Romanist of the sixteenth century, Cujas, who held himself remote from contemporary affairs. Finally, the "theory of office in Bodin and Loyseau" is analyzed.

The development thus leads from a relatively simple and static system



to an increasingly complex and dynamic society, from representative authors of the feudal system to outstanding theorists of the national state. The material by necessity has to be selective, concentrating especially for the sixteenth century on France, "the laboratory of political thought." Such a selection, no doubt, gives the development a more definite trend than the intricate story of revival, adaptation, and modification of the Roman law in other countries might have given. Yet even within such limits, the study fulfills its purpose.

The careful analysis not only gives a splendid illustration of the life story of a basic concept in political thought, but also throws some new light on the "influence of Roman law." It certainly modifies a predominant conviction that Roman law gave "form to the theory of absolutism." In fact, it proves that the very same texts have been used to support opposite theories limiting absolute power. The study thus sets a remarkable example of the persistence of a formal concept in the history of thought, transforming its actual character in response to changing social needs. The scholarly treatment is well blended with a consideration of broader issues of political theory and intellectual history. Gilmore thus succeeds in turning a seemingly specialized study into an exciting essay for the interested political scientist.

SIGMUND NEUMANN.

*Wesleyan University.*

*The Educational Philosophy of National Socialism.* BY GEORGE FREDERICK KNELLER. (New Haven: Yale University Press. 1941. Pp. viii, 229. \$3.50.)

As Dr. Kneller states, "the challenge of present-day Germany, however mighty the machine that rolls over Europe, is not in its deepest reaches a military one. It is a challenge of beliefs, into which the energies of a sturdy people have gone and the vitality of a whole generation is being poured, not only in Germany, but in a constantly increasing number of formerly 'free' countries." National Socialism is essentially a gigantic educational enterprise. Its import is shown by the fact that it is steadily becoming the standardized creed of an increasing mass of German-speaking peoples throughout the world; a creed which makes racial, national self-interest the ultimate standard of conduct, asserts the right of unlimited material and ideological expansion, and is in essence the most formidable attack upon the basic teachings of liberalism heretofore experienced.

In its original form, this volume was presented as a Ph.D. thesis to the department of education at Yale University. The result of six years' study, it constitutes a comprehensive and detailed examination of the educational theories of National Socialist leaders—a carefully documented an-

thology of original source material. It is an unusually competent and much needed contribution to an understanding of the issues involved in this world conflict. Dr. Kneller has not attempted to evaluate critically the educational philosophy he has so ably outlined. Personal judgments have been rigorously excluded. Nor has he attempted to show how the educational theories actually work in practice. What he has done is "to present the situation as it is, seen in its own light, and from its own point of view."

One of the best chapters in the book is that in which the author examines critically the backgrounds of educational theory and the postulates on which it is based. Although it has been the fashion of National Socialists as well as others to trace the origins of Nazi philosophy to the philosophical writings of the past, Dr. Kneller finds that the roots of National Socialism are not so deeply sunk in this past as many would have us believe. "The compatibility of isolated elements of thought does not necessarily show harmony of the whole point of view." This becomes clear as he examines the writings of Luther, Herder, Schiller, Kant, Fichte, Hegel, Wagner, Nietzsche, Treitsche, Lagarde, Bernhardi, and many others. However much some of these writers may have contributed to certain aspects of Nazi thinking today, it is unlikely that they would subscribe to the philosophy of National Socialism as a whole. The only exception, according to the author, would be Houston Stewart Chamberlain, "the godfather of National Socialism."

Using as documentation exclusively Nazi sources, Dr. Kneller produces a mass of evidence to show: (1) that the educational philosophy of National Socialism is a new ideology, the result of crisis, a modern, pragmatic creed, arising out of "the broad demands of German contemporary life"; (2) that it is a strong, conscious, and almost total antithesis to the ideals of liberalism; (3) that its fundamental postulate is the salvation of the German people; and (4) that in spite of literary extremism, educational practice is far less revolutionary than one might expect.

For nearly five years after Hitler came to power, Nazi educational theory presented a baffling maze of competing and conflicting aims and theories, at least in the writings of Nazi "educators." As a matter of fact, Hitler's *Mein Kampf* gave then, as it gives now, the clearest statement of objectives and method. The educational reforms of 1938, however, brought a certain degree of order out of the chaos, although educational theory as well as National Socialist ideology is far from being crystallized.

Dr. Kneller gives considerable attention to the impact of Nazi educational doctrines upon educational practice—upon methods of instruction, content of courses, teacher training, and the rôle of youth organizations, the church, labor service, and military service, as well as of the public schools themselves. In spite of its alleged newness, he finds that "there

is nothing very profound about official National Socialist educational policy." Nevertheless, its profundity is not the important thing. What is challenging is the driving, racial, mass solidarity which it produces.

HARWOOD L. CHILDS.

*Princeton University.*

*Law Without Force; The Function of Politics in International Law.* By GERHART NIEMEYER. (Princeton: Princeton University Press. 1941. Pp. xiv, 408. \$3.75.)

This is an extremely interesting and an unusually provocative book, in which the author makes a thoroughly unorthodox approach to international law and international organization. Niemeyer's general theme is very well indicated by the title of his introduction: "The Unreality of International Law and the Unlawfulness of International Reality," by which he means to suggest that international law has broken down because it is fundamentally unsuited to international order, because "in its present form it neither serves the need, nor appeals to the moral sense, of the modern world," because of "the inadequacy of its concepts, the obsolescence of its standards, the unreality of its rules." This theme and the functional theory of international law are brilliantly argued through nine chapters arranged in three parts dealing respectively with "The Function of Law in International Politics," "Legal Theory and Political Reality," and "A Reconstruction of International Law."

Niemeyer's argument runs about as follows: (1) International law and international order have broken down because the system in operation for the last three hundred years has been fundamentally unsound. (2) The unsoundness of international society (indeed, of "the very idea of society") is indicated by its paradoxical nature, that is, the concept of separate and independent states on the one hand and of a coherent whole which assumes mutual dependence and subordination on the other hand—the two poles of individual existence and social cohesion. (3) Since the "personalistic" system (so called because of the personality attributed to the state) is unsound, it should be replaced by the "functional" system, in which law "is no longer held to consist of mere formulas of command," but instead is conceived to be "the inner lawfulness governing the actual behavior of people." (4) In this functional system, "the problems of obligatory force of legal rules and of their revision cease to have any significance," and hence we have "Law Without Force." In this system, "a command which is issued without producing any actual effect on the behavior of individuals is not considered to be law"; the law is found "in social reality," need not be deliberately made, and, in fact, "never can be enacted as an abstract rule opposed to living reality." (5) Since such a functional system

can operate only with respect to clearly recognizable social activities, "international organization as political organization, i.e., as an agency for the general coördination of interstate relations, is a chimera," though there may be international organization in the form of agencies "with tasks that are specified and concretely agreed upon in advance." (6) The present state-system cannot, or should not, be changed into either a federal union or a world state, because, if the former, it establishes a system with divided sovereignty, divided powers, and divided organization, and is therefore impracticable, political organization being "necessarily monopolistic and exclusive"; while, if the latter, it would be "bound to be less dependent on consent, to be more mechanical, more standardized, and therefore culturally more oppressive, than any other government."

It is, of course, unfair to sum up Niemeyer's case in this drastic manner, for he himself makes an elaborate analysis of each point which needs to be read carefully. His scholarship and legal learning are bound to arouse profound admiration, but his reasoning does not seem entirely persuasive. In the first place, it is not at all clear to the reviewer what is actually meant by the "functional" system of law, beyond the fact that it is a system of legal rules somehow adapted to the needs and to the behavior of individuals and of states. Secondly, while the paradoxical nature of international society is, of course, admitted and the consequent difficult problems are evident, it does not follow that those problems are completely insoluble. Anyone at all familiar with our own constitutional system knows about paradoxes—individual liberty versus social needs, due process versus police power, etc., etc.—more or less happily resolved by compromises and legal formulas, which are irrational and contradictory in themselves, but which somehow work. Those familiar with the procedures of the League of Nations know how much progress was being made there in the reconciliation of these apparent paradoxes through practical compromises between principle and practice. Thirdly, Niemeyer's strictures against international organization, especially against international federal union, would seem to apply also against our own United States, still federal in spite of all the centralizing tendencies of these 150 years. Were he somewhat more familiar with our own experience, he might see more possibilities in international organization along federal lines, whether an improved League of Nations or a more genuine Federal Union.

Finally, it may be pointed out that Niemeyer himself offers no practical plan for making the change from the present "individualistic" or "personalistic" system of law to his "functional" system. "We can do no more," he says, "than indicate in a general way that the change will come more by way of a new orientation than by way of a new organization. The machinery of legal order will follow the needs which it is meant to serve. Consequently it is the thinking which has to be remodeled before any

external devices are envisaged. What is needed is not so much a new mechanism as a new outlook of the men who handle the existing one." The new system must be one "which will coördinate the respective functions of the states—a system which, instead of restricting states, represents the conditions under which their functional ends can best be attained"; and Niemeyer's way of attaining these conditions is indicated by his concluding quotation from John Macmurray: "What we have to do is to wait and be quiet; to stop our feverish efforts to do something. The next word is not with *us*, but with reality."

This somehow seems rather futile, for one is bound to wonder whether Herr Hitler will also wait and be quiet while this coördination goes on.

CLARENCE A. BERDAHL.

*University of Illinois.*

*Oppenheim's International Law.* Sixth Edition. Vol. II: *Disputes, War, and Neutrality*. EDITED BY H. LAUTERPACHT. (London: Longmans, Green and Company. 1940. Pp. xliv, 766. \$17.50.)

It is now thirty-five years since Oppenheim's treatise was first published. In that time its claim to a place among the classics of international law has been firmly established. In 1935, the fifth edition, under the able editorship of Professor Lauterpacht, enhanced greatly the value of the treatise. Now the publishers have the temerity to put out a sixth edition in the midst of a global crisis. Were they justified in taking such a bold step?

The answer, I think, on the whole is "yes." In the first place, any treatise on international law is principally a history of past practice, and to this extent is not greatly affected by the shifting events of the day. In the second place, a great deal has happened in the field of international law since the last edition, and many sections needed drastic revision. Again, since the present volume deals with war and neutrality, what more appropriate time could there be for its issuance than the current period of world struggle?

At the same time, it cannot be denied that the present crisis is forcing a reconsideration of many of our accepted notions about the nature of war, and some sections of this new edition have already been outdistanced by contemporary thought and events. Thus Lauterpacht insists throughout that the original distinction between civilians and armed forces is still intact, and that war is today merely "a contention of States *through their armed forces*" (p. 168, italics in original). But this is very difficult to reconcile with what is taking place in Europe today. Again, in the section on air warfare, Lauterpacht asserts that "international law protects non-combatants from indiscriminate bombardment from the air" (p. 416).

The inhabitants of any English or German city of today might be pardoned if they were not very much impressed by this kind of protection. The revised section on armed merchantmen merely repeats the traditional British defense of the practice of arming merchant ships, and adds that the novelty of a weapon does not carry with it a legitimate claim to change of the existing rules of war. At the same time, the British practice of forcing neutral merchant ships into control ports for examination is defended by Lauterpacht on the ground that under modern conditions visit and search at sea have become very difficult. In other words, technological advances seem to justify a change in the rules of law in the one case but not in the other.

On the whole, though, the traditional rules of law have stood up surprisingly well under the impact of total war. The present volume contains an extremely skillful exposition of these rules. Let us hope that it will be widely used.

FREDERICK S. DUNN.

*Yale University.*

*The Foundations of a More Stable World Order.* BY FERDINAND SCHEVILL, JACOB VINER, AND OTHERS. (Chicago: University of Chicago Press. 1941. Pp. xiii, 193. \$2.00.)

The six lectures published under this title were designed primarily to supplement the round table discussions at the sixteenth Institute of the Harris Foundation of the University of Chicago "by placing the subject-matter of the Institute in its proper historical perspective and by emphasizing some of those factors in international relations which particularly affect the stability of the world order." The historical perspective is provided principally by Ferdinand Schevill, who argues that our Western civilization, like others which have preceded it, is subject to the laws of growth and may be destined to fall as they have fallen. A real threat is the exaggeration of science and the nation-state, the two ruling forces of the present stage of Western civilization. In order for it to survive we, not as individuals but as "purposefully organized groups," must find a common understanding, and must resolutely tackle the complex problems presented by the world situation with full appreciation of historical factors.

Charles C. Colby, describing the rôle of shipping, Quincy Wright, of international law, and Walter H. C. Laves, of international institutions, draw attention to factors which have affected, and will undoubtedly continue to affect, the stability of world order. Wright itemizes the chief defects of international law and suggests the means of remedying them, and Laves makes a similar analysis of international institutions. Both imply that a world order can be realized only if the Axis Powers are defeated. Jacob Viner and J. Fred Ripsey emphasize the rôle of the United States,

what effect its policies have had during the past twenty years, and what effect the war is likely to have on it. They agree that it is necessary for the United States to strengthen greatly her defenses in view of a possible victory by the Axis Powers, and consider the possibilities of a closer union with the other states of this hemisphere. Both begin their analysis of the position of the United States with some reflections on American foreign policy. Some readers will feel that Viner overestimates and that Rippy underestimates, the effect of American isolation on the European situation.

The reviewer agrees with Rippy that the responsibility for Hitler's strength rests heavily on Britain and France. However, it seems to him that Rippy does not attach enough importance to the effect of the neutrality policy adopted in 1935. By its adoption, the American people served notice that they could not be counted upon to prevent acts of aggression. More important than the "go ahead" signal to Hitler, as this action has been described, was that it undoubtedly encouraged the appeasement elements in Britain and France to pursue the policy which has since proved so disastrous and the isolationists here to believe that the American democracy could be secured without positive efforts to protect it. To others than those who attended the lectures last summer, they should be of interest for the analysis of some of the problems involved in establishing a more stable world order as these problems were seen by competent observers immediately after the collapse of France.

HOWARD B. CALDERWOOD.

*University of Michigan.*

*The United States and Japan's New Order.* BY WILLIAM C. JOHNSTONE.  
(New York: Oxford University Press. 1941. Pp. xii, 592. \$3.00.)

This book is not concerned with speculation about the nature of Japan's "new order" and its future significance for the United States. It is a solid, comprehensive treatment of the effects of the Sino-Japanese war on American rights and interests in China, and of American policy as it has been defined and applied during the course of the war. The conception of "rights" as distinguished from "interests" is based upon treaty grants from China. The "interests," which are economic, philanthropic, and religious, have been created within the framework of treaty "rights" such as those of extraterritoriality, residence within special areas, and navigation. Part I, following two introductory chapters, defines American rights item by item, explains how each came into being, and describes the effect of Japanese action on each. Part II does the same thing for American interests, including trade, business, religious, and philanthropic enterprises. This section concludes with an interesting and suggestive analysis of the attitudes of Americans in China toward the war.

Part III takes up American Far Eastern policy as it has been affected by the Sino-Japanese conflict. This is considered in three successive chapters determined largely by the chronology of evolution of the war. The first phase extends to January, 1938. During it, policy was "directed toward the maintenance of American rights and interests in China by means of diplomatic protests and the action of American diplomatic and consular officials on the spot" (p. 250). The second phase was terminated with the outbreak of the European war. Within it was the period of formulation of the "new order" conception and American rejection of its validity. During it, however, "the pattern of the first phase was continued. Constant restatements of general principles of policy were implemented by protests against specific actions by Japan in China. Some material aid was given China in addition to moral support. The movement of the American fleet into the Pacific in the spring of 1939 was a hint to Japan that the United States was not unprepared to back up its protests" (pp. 281-82). The third phase extends from the outbreak of war in Europe to the present.

The book has two concluding chapters: one devoted to conclusions, in the nature of a summary; and one in which the author develops his view of "a Far Eastern policy for the United States in a world at war." Many will not agree with his general and specific proposals. The reviewer does. The book has eight appendices, a brief but adequate bibliographical note, and a foreword by Admiral H. E. Yarnell. The specialist will find the data in the first two sections of as much value as the discussion of policy in the third. The general reader will probably find the third part the most interesting and illuminating. Both will agree that Professor Johnstone has made a real contribution to the literature both of the Far East and of American foreign policy.

HAROLD M. VINACKE.

*University of Cincinnati.*

*Holmes-Pollock Letters: The Correspondence of Mr. Justice Holmes and Sir Frederick Pollock, 1874-1932.* EDITED BY MARK DEWOLFE HOWE. (Cambridge: Harvard University Press. 1941. 2 vols. Pp. xxii, 275; 359. \$7.50.)

This collection of letters between two eminent lawyers, running over a period of nearly sixty years, is rich in items philosophical, legalistic, and historical. It is without order, of course, except the order of chronology. Yet there is synthesis in the evolution of ideas and in the adjustment of minds to the facts of history and to the conditions of growing old.

As to Holmes, in whom American readers will have the greater interest, the letters confirm impressions about him already widely held and shed new light as well. Particularly illuminating are his comments about his



life and activities as a member of the Supreme Court. He was greatly pleased at his appointment to the Court, which he received from Theodore Roosevelt, but he was correspondingly depressed as to the kind of publicity the appointment received. It was generally favorable publicity, but it seemed to him devoid of discrimination and understanding. The comments, he declared, had the sloppiness of American ignorance. He thought he had already made a genuine contribution to jurisprudence and it grieved him to see it completely unrecognized. He was stung by an adverse comment to the effect that he was brilliant but not sound.

As a member of the Supreme Court, he soon offended the President who had appointed him by dissenting in the Northern Securities case, which constituted one of Roosevelt's pet antitrust projects. Roosevelt even considered barring him from the White House for his stand. He believed then, and he continued to believe, that the Sherman Antitrust Act was a humbug based on economic ignorance and incompetence. He believed that the Interstate Commerce Commission was an unfit body to be entrusted with rate-making, and he seems to have taken some pride in writing decisions limiting its powers. Yet he was so skeptical as to knowledge about the goodness or badness of laws that he had no practical basis of criticism except what the crowd wanted. It was this attitude of skepticism, no doubt, that resulted many times in his joining with Justice Brandeis in dissenting from decisions striking down acts of legislation on constitutional grounds. As to his own thinking, he remained unconvinced that the abandonment of *laissez faire* represented a wise departure.

With all his skepticism, a strain of idealism in his make-up prevented his appreciation of Charles A. Beard's *An Economic Interpretation of the Constitution of the United States*. He failed fully to comprehend Beard's underlying desire to expose the pompousness of his fellow-historians, which was not unlike Holmes's own irritation at pompousness on the part of brethren on the Court. His idealism became genuine ardor in the defense of civil liberties. He was disturbed at the imperviousness of some of his colleagues in the face of gross invasions of such liberties. He writhed beneath the criticism directed at him for opinions of the Court written by him upholding convictions of Eugene V. Debs and others accused of espionage and other war-time offenses. The violations of law seemed to him clear, and he thought the Court could not have acted otherwise; but he hoped the President would pardon the unfortunate convicts.

He lived a rich life apart from his profession. His reading ranged all the way from Spengler's *Decline of the West* to *Gentlemen Prefer Blondes*. He discussed both with equal zest. He was especially fond of brilliant young men. He greatly admired Walter Lippmann, and he tried vainly to convey to his correspondent his personal enthusiasm for Harold Laski, who had been introduced to him by Felix Frankfurter. There was a period in which

he seems to have been uneasily conscious of his age, the period around 1911 and 1912 when he was reaching seventy and closing a decade on the Court, so that he was entitled to retire without reduction of compensation. After that period, he lost much of his self-consciousness and continued zestfully at his work without much concern about the advisability of retirement. The correspondence documents the story of the richness and variety and professional competence of a man who will go down in history as one of the outstanding personalities of his time.

CARL BRENT SWISHER.

*Johns Hopkins University.*

*Organization of Courts.* BY ROSCOE POUND. (Boston: Little, Brown and Company. 1940. Pp. xiii, 322. \$5.00.)

Any book by Roscoe Pound should command attention of students of government or law, but a volume by him on the organization of courts is especially important. After a lifetime of leadership in legal study and teaching, as well as unusual opportunities for direct observation of the processes of justice, the author brings a background of scholarship and wisdom to his task which few could equal and none surpass. The basic data for the book are historical, but are intended to point out the chief trends of judicial development as a guide to future improvements in the courts rather than to be a general history of American law.

After a brief, but ample, chapter on the English model for the colonial courts, there are two chapters on the organization of the courts in the colonies. The chapter on the Seventeenth Century describes, colony by colony, the judicial agencies as first established, while the chapter on the Eighteenth Century considers the development of those agencies by similar types, cutting across colonial lines. Thus there is a section on the ultimate court of review, one on courts of general jurisdiction, and another on probate courts. The next three chapters describe the development of the judicial establishments in the states and federal government during the past century and a half. One of these chapters is devoted to the pre-Civil War period, another to the courts in the newer states, and a third to the changes which have been made in the older judicial systems. Each of these chapters contains a wealth of detail, with full citation of the sources.

The workmanship in these chapters is of the highest. They are thorough, covering the entire field of judicial organization as it has developed in America. They are accurate—a careful reading has failed to disclose any significant slips. They are exceedingly scholarly, representing prodigious research in the statutes, judicial decisions, and constitutional convention proceedings. But they are also tedious—at least to one who has come to

look for the flashes of insight which have so distinguished the author's genius, or for the amazing gift of synthesis which features his earlier works.

The reader who lays the book aside after concluding the historical survey, however, will make a serious mistake. In the two final chapters, the old Pound reappears. Here one finds the apt phrases, e.g., "Specialized courts should be replaced by specialist judges" (p. 272), the broad yet accurate generalizations, and the unerring judgment based on a lifetime of judicial study. In them Dean Pound brings together a summary of his criticisms of the plethora of judicial ideas which have been tried in the United States and outlines in succinct form the principles on which a judicial establishment should be based if it is to meet the needs of present-day America. The main ideas in these chapters are not new, but if they were to be adopted they would certainly be revolutionary.

The chief criticism of our courts centers around the inveterate tendency of constitution-makers and legislators to hamstring the judges with detailed prescriptions of inflexible administrative regulations. It is pointed out, for example, that five pages of statutes are required to specify the places where the Massachusetts district courts are to be held and that these provisions have been the subject of 274 statutes. The chief constructive proposal is that there is "urgent need of an administrative hierarchy with a responsible head and responsible subordinates" (p. viii). It is remarkable that the courts have done as well as they have in the past in view of their tradition of disorganization. Indeed, the "courts have on the whole the best constructive record of any of our institutions" (p. 292). But if that record is to be maintained, it will be necessary for them to secure the efficiency which can only come from more thorough organization.

Lack of uniformity is perhaps the most striking characteristic of American political institutions. Instead of the forty-eight experiment stations which Lord Bryce praised, we really have several hundred. This is as true with respect to the courts as of any other branch of our government. No two states have the same kinds of judicial agencies, and within a single state, several different forms of court organization are commonly found. It is possible, for example, to illustrate every known method of choosing court officers without leaving the confines of New York State. It is amazing that so little serious effort has been made to apply scientific techniques to the study of these various forms of court organization. Perhaps one excuse for the failure of political scientists and lawyers alike to grasp their opportunities in this respect has been the huge amount of spade work which would have to be done before pay dirt could be found. Dean Pound has cut a substantial part of the ground from under that excuse. By pointing out the broad features in the development of our courts and by showing

where sources of information may be secured, he has prepared the way for further statistical, analytical, and case studies of the problem.

RODNEY L. MOTT.

*Colgate University.*

*Justice in Grey.* BY WILLIAM W. ROBINSON, JR. (Cambridge: Harvard University Press. 1941. Pp. xxi, 713. \$7.50.)

This study is a thorough discussion of a hitherto much neglected phase of the governmental system of the Southern Confederacy. It is characteristic of historians to deal very briefly and simply with judicial systems because of the legal technicalities involved. Here for the first time is a complete analysis of the organization, jurisdiction, and operation of the federal as well as the state judicial systems of the Confederate States of America.

The state courts were practically unchanged by the transition of the states from the Union to the Confederacy, because the state constitutions, statutory law, common law in the Old South and a combination of common law and the civil law in Florida, Louisiana, and Texas, judicial precedent and procedure remained unmodified. Even the personnel of the state courts remained undisturbed except as it was affected by military service. There is, therefore, no special contribution in that phase of the discussion relating to the state courts, since they were the same after as before secession, with the exception that their jurisdiction was somewhat increased as a result of the reduction of the jurisdiction of the federal courts as compared with those of the United States. This was a logical result of the greater emphasis on state rights characterizing the entire system. It will be remembered that in the Federal Convention of 1787 there was such opposition to the establishment of inferior federal courts that the Convention left the matter to the Congress. The Constitution of the Confederacy, however, specifically provided for federal district courts. Only in Kentucky and Missouri, where the state governments attempted to secede and were overthrown by the establishment of governments loyal to the United States, were the state judiciaries seriously disturbed.

The judicial system of the Confederacy consisted of two classes of courts as to legal basis: (1) constitutional courts and (2) legislative courts. The first class was divided into: (1) central courts and (2) local courts. The second class consisted of (1) territorial courts for Arizona and (2) extraterritorial courts for the Indian country. The central courts provided by the permanent constitution were: (1) the Supreme Court; (2) the High Court of Impeachment—the Senate of the Confederacy, and (3) the Court of Claims. The Supreme Court was never established, though repeated attempts were made in Congress to comply with this mandatory provision of the Constitution. It is interesting that the Court of Claims

was made a constitutional court, with compulsory jurisdiction over a matter that was still a political issue in the United States, though a so-called Court of Claims had been established in 1858.

The local courts were (1) the district courts and (2) the Court of Admiralty and Maritime Jurisdiction located at Key West. Each state was provided with a district court, which sat in two divisions of the following states: South Carolina, Georgia, Mississippi, Louisiana, Virginia, Arkansas; in three divisions of Alabama, North Carolina, and Tennessee; and in four divisions of Florida. There were several significant features of the district court system. In the first place, there were no circuit courts without a separate bench as in the United States—an anomaly later abolished. The judges of the district courts were permitted to fix the terms of their courts. The most progressive feature of the system was that the district judges could sit in chambers to issue the various writs, to make rules and orders in urgent cases, and to conduct interlocutory proceedings—the preliminaries to trial. This was a tremendous advance which was adopted by Great Britain in 1873 and is being introduced in judicial procedure in the United States at the present time. Common law procedure is abolished in chambers; cases are prepared for trial, and in a large majority of instances are settled without formal trial.

Law and equity were combined in the same court and administered according to modified and simplified procedure. This had been done in Texas in 1845 and was done in Great Britain in 1873. The influence of the civil law in Florida, Louisiana, and Texas was evidently responsible for this innovation in the Confederacy.

No state could be made a defendant in the jurisdiction of the Supreme Court. Nor did the Court's jurisdiction extend to controversies between citizens of different states. A citizen could be brought only before the district court of the district of his residence. State laws governed the practice of the district courts. Appeals to the Supreme Court in civil matters were restricted to controversies involving \$5,000 or more. In general, jurisdiction was more extensive in the federal district courts and the state courts than in the United States.

A rather elaborate Department of Justice was provided, and the courts were extensively staffed, including auxiliary masters and referees. In general, emphasis was placed on the administration of justice by a provision for a more adequate system of judicial administration. A hierarchy of administrative officials was provided.

This is a piece of careful research, which a brief review cannot properly evaluate. While most of the information in the study is new, its most suggestive features are those disclosing the changes made in an effort to improve upon the experience of the United States, only a few illustrations of which are given in this review. The study is rich in detail, carefully

documented, and filled with exhibits of legal forms and papers of interest to students of government and law. It is a contribution to historical jurisprudence.

C. PERRY PATTERSON.

*University of Texas.*

*Education for Public Administration.* BY GEORGE A. GRAHAM. (Chicago: Public Administration Service. 1941. Pp. vii, 366. \$3.50.)

Here are reported the results of Professor Graham's study sponsored by the Public Administration Committee of the Social Science Research Council. During 1938-39, the author visited over twenty campuses and several seats of government, conferring, observing, and interviewing. The book is divided into two parts, the first dealing with general problems, and the second describing and commenting upon the public administration programs at specific universities.

The underlying theme of the volume is the duty of the universities to teach public administration. The feasibility of doing so—a subject which led to never-ending controversy at round tables a decade ago—is not even recognized as a debatable question. Indeed, a positive and unapologetic stand for professional, and even vocational, objectives and orientation is taken. "To shy away from public service training on the grounds that it is professional and not liberal is either hypocrisy or an unconscious rationalization to justify continuing a traditional emphasis in teaching and research" (p. 16).

Five types of professional training having close relation to public administration may justifiably interest the universities. These include the existing professions, both old, such as medicine, and new, as social work; research in the natural sciences; research in social sciences; auxiliary staff agencies (note hybrid terminology); and managerial work. The latter three, and especially the last two, are legitimately within the purview of the public administration teaching programs. The curricula should probably be pointed up to preparing people for specific jobs rather than trying to train for general public administration on too broad a basis; and respect is urged for such tool courses as statistics and accounting. Teaching should be bolstered by constant and thoroughgoing research which has the enrichment of teaching materials as its immediate objective.

Those who may have hoped for an all-out plea for "back-to-the-classics" and traditional cultural courses will find no comfort in this book. A strong stand is taken in favor of embracing the dynamic world at hand through the social studies; a liberal education need not shy away from the contemporary world of affairs. Those who would establish a counterpart of the British administrative class (as recruited) will be interested in the dictum that "it would be an anachronism in twentieth-century America"

(p. 118). Yet Mr. Graham does not counsel abandoning the cultural traditions of the past. Quite to the contrary, he pleads for the unity of knowledge; but he insists that retreating from the perplexing world of today and taking refuge in the over-simplified unity of yesterday's knowledge is hardly liberal education.

The book is very well written, especially the first part, which lends itself to flowing sentences and brilliant phrasing. Indeed, the author reveals himself as a stylist of merit, an aptitude for well chosen phrases and figures of speech giving sparkle and life not ordinarily encountered in works of this nature. The result is a volume which is highly readable, yet at the same time dignified and scholarly. Would that there were more of the same in our field!

Mr. Graham has been cautious in dealing with subjects that might offend the sensibilities of his colleagues. When writing about individual universities, a critical paragraph usually follows the reporter's description of the program. The in-service institutions are commended for their laudable efforts, but certain cautions relative to maintaining standards are uttered. Some skepticism is voiced regarding the validity of the Syracuse drill in line functions in preparing for other than posts in local government (p. 52). Indicative of Mr. Graham's flair for phraseology is his reference to Harvard's "somewhat agnostic view of public administration" (p. 241).

The book is a splendid one—an achievement which alone would justify the existence of the Public Administration Committee. Every political scientist should read it.

JOHN M. PFIFFNER.

*University of Southern California.*

*The Administration of Federal Work Relief.* BY ARTHUR W. MACMAHON, JOHN D. MILLETT, AND GLADYS OGDEN. (Chicago: Public Administration Service. 1941. Pp. ix, 407. \$3.75.)

This scholarly, well-written volume is a distinguished addition to the series of Studies in Administration currently sponsored by the Committee on Public Administration of the Social Science Research Council. The most complete account of the federal work relief program which has thus far appeared, it sheds much light upon the numerous and complex problems involved in this greatest civil undertaking of government.

Following a brief introduction outlining the scope and administrative significance of federal work relief, the authors trace the steps leading to the establishment of the Works Progress (now Work Projects) Administration in 1935. This is unquestionably the best part of the book. Three excellent chapters show how the confusion and the uncertainty that prevailed in the preliminary planning and legislative stages of the program were carried over into its administration. At the outset, the organizational

and functional pattern was uncertain and there were no clearly defined objectives. An even greater handicap was the "atmosphere of impermanence" produced by the current belief in Washington that the W.P.A. would be a temporary enterprise with no more than a one- or a two-years' lease on life. And, as the authors demonstrate, constant improvisation and the persistent refusal of congressional and administrative leaders to come to grips with the fundamentals of the relief problem have continued to be the greatest obstacles to effective operation of the program.

Part III deals with problems of central management, especially those of project planning and approval, work relief wages, administrative research, and finance. Part IV, "Management within the W.P.A.," analyzes problems of internal organization, central control over the regional and state offices, and public relations. An especially interesting chapter considers the rival claims of specialist and administrator, and suggests that in a large operating agency these can best be resolved through a scheme of dual supervision that provides separate lines of technical and administrative command leading to and integrated at the top of the organizational hierarchy. The final section of the book examines the various administrative relations of the W.P.A. with state and local relief agencies, and with such federal agencies as the National Youth Administration, Farm Security (formerly Resettlement) Administration, United States Employment Service, Bureau of the Budget, and the General Accounting Office.

Four main conclusions regarding the proper rôle of the President in the operation of a multiple program like the W.P.A. are particularly significant. "First, that to have the President as a directing head of a program is not a desirable arrangement. Second, the conditions that force the President to assume chief administrative direction of an enterprise can be largely avoided if purposes are planned and defined. Third, the Presidency as an institution, however, must provide the means for periodic reassessment of policy. Fourth, the Presidency must furnish the supervision of the interrelationships among agencies that inevitably arise, no matter how decisive may be the original delegation of authority made possible by good initial planning."

The authors are "friendly critics." While they reveal many errors and mistakes made by the W.P.A., they write glowingly of its virtues and accomplishments. They paint the picture of an agency that has achieved success despite tremendous handicaps. Their inquiry is confined to problems of administration, yet one cannot fail to detect an undercurrent of whole-hearted approval of the fundamental policies embodied in the federal program. Their disposition is to defend or condone most of the administrative shortcomings and to minimize the importance of adverse criticism. Two basic considerations, for example, are not adequately treated. These are, first, the harmful effect upon individual morale induced



by long-continued employment on public work relief projects, and, second, the thesis advanced by many students of public welfare that work relief should be made an integral part of a permanent federal-state relief system. It is difficult to see how the authors could have treated a subject of such vital public interest in an entirely neutral fashion, and it is no reflection upon their competence as scholars to point out that whether the present federal policies are sound is a question on which there is a great difference of informed opinion.

PAUL T. STAFFORD.

*Princeton University.*

*Problems of Administration in Social Work, 1940.* BY PIERCE ATWATER. (Minneapolis: University of Minnesota Press. 1940. Pp. v, 319. \$3.50.)

*The Public Welfare Administrator, 1940.* BY ELWOOD STREET. (New York: McGraw-Hill Book Company, Inc. 1940. Pp. vii, 422. \$3.00.)

*Civil Service in Public Welfare, 1940.* BY ALICE CAMPBELL KLEIN. (New York: Russell Sage Foundation. 1940. Pp. v, 444. \$2.25.)

These three volumes—all published within a few months of each other—indicate the growing interest in the application of sound administrative organization and practice to new fields of public policy. The great expansion of governmental activity in the field of social welfare and security in the last half-dozen years has not merely modified public policy in response to new attitudes and interest in the body politic; it has created as yet unfulfilled demand for trained professional personnel, and for adequate administrative staff supervision.

Mr. Atwater's *Problems of Administration in Social Work* is primarily an exploration of administrative problems in private welfare. Although he deals specifically with the field of private social work, the principles which he examines and appraises are essentially those of sound public administration. He covers four broad areas: problems of the executive (which include relations of the executive to the staff, and to governing boards and to the community); day-to-day administrative problems (personnel, fiscal, and office management); broad problems of administration (including central planning and research, public relations, and money-raising campaigns); and field training for administration. The study is designed to give sound working rules on the administrative questions discussed. Theory is applied to practical problems rather than analyzed abstractly.

Mr. Street's *The Public Welfare Administrator* covers many of the same problems from the point of view of the public welfare services. The executive's position in relation to policy-forming agencies is not, after all, very different in public and private welfare activity. Mr. Street does not discuss in any detail the relations of public welfare administration to

legislative bodies. What he does, however, is to indicate and illustrate how sound administrative practice within the public welfare agency will affect general community attitudes—which in turn will be reflected in legislative policy. He examines with particular emphasis internal administrative problems of personnel, finance, and over-all management. Designed primarily as a textbook, the volume is none the less a valuable contribution to an understanding of effective administration of an expanding field in which government, as Mr. Street points out, will increasingly participate. He emphasizes the fact that in this expansion public welfare agencies are inevitably geared to other public services and must relate themselves to the whole fabric of government if they are to be truly effective. As he puts it: "Public welfare is part of the mosaic pavement of government which must be smooth, all-covering, and properly maintained for the support of the needs of all citizens."

Miss Klein's *Civil Service in Public Welfare* covers a narrower segment of the field in greater detail but with no less clear a perspective on the problem as a whole. Her study is the first comprehensive survey of civil service principles and practices as applied to public welfare. Her book is replete with case studies of actual personnel and organizational problems and gives a definitive picture of legislative and administrative action in Washington and in the states to 1940. She treats with urbanity and insight such problems as drafting and scoring written tests, conducting oral examinations, as well as more general problems of personnel organization such as recruitment, classification, service ratings, and in-service training. It is a volume which should be in the library of every public administrator, whether or not in the welfare field. It is, indeed, one of the most significant studies of recent years in the whole field of personnel management.

PHILLIPS BRADLEY.

*Queens College.*

*New Directions in Our Trade Policy.* BY WILLIAM DIEBOLD, JR. (New York: Council on Foreign Relations. 1941. Pp. x, 174. \$2.00.)

One of the most stimulating studies of United States trade policies yet to appear is this volume, with 145 pages of text, appendix, critical bibliographical notes, and a formal bibliography. Without sacrificing standards of scholarship, the author makes his subject as refreshing and as timely as a morning newspaper. While it is primarily a study of war's impact on our previous peace-time trading policies, Mr. Diebold does not neglect future problems: continued aid to Britain; checking Japanese aggression; economic defense of Latin America; and what may be expected in the event Germany wins, if there is a stalemate, or if Britain is victorious. In conclusion, he considers without too much wishful thinking the future of liberal commercial policies.

This makes rather gloomy reading for economists of the free trade

school. The United States has traditionally adhered to liberal trading practices, protective tariffs being regarded as liberal when compared with the customary practices of today. "Yet, by raising its high protective tariff to even higher levels in 1930, it incurred some of the responsibility for the adoption of quotas, exchange control, compensation agreements, and other unliberal trading practices against which it has protested. In actively promoting in 1934-39 the Hull program, we are striving to restore in world trade the liberal policies to whose destruction we had previously contributed. Even after the war began, we sought to retain our own liberal policy regardless of what the rest of the world might do. Then our own interest in the war's outcome led this country to give up and adopt economic controls similar to, but milder than, those of the belligerents. The problems of the post-war world will be ours as well as theirs" (p. 141). This we cannot escape.

The usefulness of commercial policy as a weapon of diplomacy will make governments reluctant to give up war-time powers in the commercial field. The demobilization of armies, the industrial transition from war to peace, the reconstruction, and all the government problems incidental to these, will prolong measures of economic control. They may well become permanent. Vested interests grow up adapted to the conditions of the control and fearing any change. It is difficult to alter one part of the economic structure without making changes in many other parts. "These bars to a return to liberalism will be reinforced by the factors which have made for a steady increase all over the world of government intervention in economic processes . . ." (p. 142).

Just how far these controls of foreign trade are likely to go in the matter of producing domestic controls necessary to back them up, the author does not venture to state positively. But he faces squarely the fact that the problem exists. He quotes G. D. H. Cole, as a spokesman for the increasingly more potent labor force in England: "War is bound to strengthen very greatly the tendencies making for centralization and for public control of our resources both of man-power and of capital equipment." The United States may not only be compelled to give up hope of continuing a policy of pure liberalism in the field of foreign trade, but may also have to resort to measures of control of domestic markets as a necessary incident to her diplomacy. In a world where most other national economies are controlled, it would be hard to make a liberal trade policy work. In the words of Eugene Staley, "People have 'caught on' to the fact that market decisions are social decisions; they will not be inclined to accept them in the future as they accept the weather. Whether we like it or not, many economic decisions from now on are going to be arrived at by political processes."

JOHN DAY LARKIN.

*Illinois Institute of Technology.*

*The Regulation of Pipe Lines as Common Carriers.* BY WILLIAM BEARD.

(New York: Columbia University Press. 1941. Pp. vi, 184. \$2.00.)

This study was presented as a doctoral thesis at Columbia University. The book is a factual study, with some interpretation on the part of the author, in the manner common to doctoral dissertations. It seems to be carefully done, and deals with a subject of increasing importance, as is attested by the news releases (June, 1941) current at the time the volume came into the hands of this reviewer. Pipe lines as a device for transporting fluids and gases to the Atlantic seacoast have come to be of special importance with the development of the program of national defense.

In the course of his study, Professor Beard has found that pipe lines were impressed by legislation, federal and state, with the legal characteristics of common carriers, as a result of monopolistic practices in certain fields of business, such as the oil industry. The independents sought legislation of this character in order to gain access to markets. In his third chapter, the author surveys the extent to which pipe lines have been declared to be common carriers, and explains why some types of lines, such as gas lines, have not come under such regulation as much as others, such as oil. Succeeding chapters deal with the familiar public utility topics of rate regulation, service regulations, control over affiliations, and regulation as a phase of general public utility regulation in the transportation field.

In his summary and conclusions, Professor Beard points out that regulation of pipe lines may proceed upon either of two theories: (1) that of transportation, or (2) that of an accessory to the particular mineral industry involved. The author is of the opinion that in the interest of the "national economy" the second is the more appropriate. A number of pages are devoted to the thesis that federal and state regulation of pipe lines as common carriers has failed to stabilize the oil business, to give the small man a chance, to make the oil business competitive, and to bring forth either private shipper complaints in sufficient number or regulatory commission investigations in a stringent enough manner to enable the author to say that regulation has been a success. Apparently Professor Beard at this point has relied upon formal investigatory materials found in public documents, for the most part, and his chapter presents no independent investigation of his own aside from these. No evidence is presented for his thesis that private shippers are dissatisfied. No doubt they are dissatisfied, but in a research job like this one expects to find some evidence presented or referred to. This reviewer gained the impression that Professor Beard is rather of the opinion that regulation failed to accomplish that which everyone knows it never was intended to accomplish, and that therefore something is wrong. To make a pipe line a common carrier was never intended to solve all the problems of the fluid mineral industries.

This comment may be somewhat unfair to the chapter under review, but the fact remains that the author leaves the distinct impression that the transportation theory is wrong because it treats pipe lines as transportation agencies, which they are in theory and in fact. To be sure, Professor Beard points out that pipe lines are dealt with as one phase of the national transportation system, and he seems to think that this is wrong; but again, he offers no evidence to support the implication. Why should they not be dealt with as part of the entire transport problem? The chapter contains no answer. It is merely assumed that this is the wrong approach.

Following these pages, a section is devoted to government ownership. What government ownership has to do with either of these theories is not made clear. A number of technological differences between pipe lines and railroads are enumerated, and the point is made that the rates on pipe lines are usually too high to stimulate competition in the oil industry. But the question really seems to be whether this, when balanced over against the interests in maintaining transportation as a whole, is desirable? The answer to this question is assumed, but not argued or supported. From page 160 to the close of the chapter, the "nigger begins to come out of the woodpile." In these pages the idea is developed that the trouble is not with regulation so much as it is with the mineral industries. The government should compel these industries to be conservative instead of wasteful, integrated in large combinations instead of divided into small and ineffective competitors of the monopolies, and Professor Beard seems in these pages to express the belief that much of the difficulty would evaporate if instead of calling pipe lines common carriers (public utilities) they were called businesses affected with a public interest as part of the mineral industries (public utilities)—that is to say, that if only the whole industry could be called a public utility, then all the shortcomings of public regulation would disappear or at least be minimized. From this point onward, the argument runs smoothly and is very convincing. It is that the trouble with regulating pipe lines as common carriers is that they alone of the processes in the extractive industries are subject to really effective governmental control.

This reviewer has no doubt that more effective regulation of the mineral industries could be achieved if the mineral industries were regulated more effectively than they are, but he doubts that this is a proof that the common carrier feature of pipe lines has proved the failure of regulation of pipe lines. In other words, the thesis is a good one on the subject of pipe lines as common carriers up to the chapter on conclusions, but from that point on the book has little to do with the title. This does not mean that the concluding chapter is not a good chapter, after a fashion, but it is the beginning of another book, and the concluding chapter of this book still

remains to be published. It were as if the Temporary National Economic Committee had written the conclusion and said, well, it is true, even though it does not fit here.

The reviewer would be unfair if he did not close on a more encouraging note. Professor Beard has done a useful piece of work; but he has illustrated how far both engineers and political scientists must travel before a unified work in the field of technology and social science can be written. The author is to be commended for this beginning, but it is definitely only a beginning.

OLIVER P. FIELD.

*Indiana University.*

*One Thousand Strikes of Government Employees.* BY DAVID ZISKIND. (New York City: Columbia University Press. 1940. Pp. 259.)

The straightforward repertorial analysis of Dr. Ziskind creates a solid and well-rounded picture of where strikes of government employees have occurred, when they have occurred, who participated, and the relative success attained by the strikers. In collecting and organizing the mass of information in the volume, the author has made a significant contribution. The serious limitation upon the data relating to most of the strike situations has prevented critical illumination of why strikes occur, beyond the obvious wage difficulties, hours of employment, and recognition of unionization and collectivist bargaining power, etc. Only summary attention is given to the merits or defects of methods of overcoming the situations likely to produce the psychological setting behind a strike. How strikes can best be prevented or handled administratively is beyond the scope of the survey.

Dr. Ziskind recognizes special indebtedness to members of the Johns Hopkins University faculty of economics, under whose counsel the work was prepared. As a natural consequence, the economic aspects of the government strike have been emphasized in the data collected. From the perspective of a political scientist, the study is less complete than would seem essential to warrant far-reaching evaluations. The problem of the stability and security of the instrumentalities of the state is not the key to the approach. Rather is the emphasis upon the similarity of the governmental and private employment situation. "Government strikes should be recognized as the normal results of existing maladjustments in public employment. . . . In the absence of more satisfactory methods of adjusting labor difficulties, strikes must be expected to occur again and again." As a matter of record, the list of 1,116 government strikes reported in the study is "incomplete, and the number of government strikes is steadily increasing." Strikes, in the outlook of Dr. Ziskind, have been among the growing pains of democracy; and as the spirit of democracy increasingly

permeates the employer-employee relationship in government service, occasions for them may be expected to diminish.

The facts surrounding government strikes are presented in accordance with a pattern facilitating the book's use in administration courses. The classification employed closely parallels the "functional," or departmentalized, approach now in vogue. The volume is safeguarded by a series of definitions and a statement of objectives. Unfortunately, many of the key words basic to the final chapters on interpretations and conclusions are not included in the prospectus; but otherwise the body of the study is clarified by careful definitions of basic words used. The final chapters on causation of strikes, attitudes of employees, "management," and public utilities seem somewhat casually done, and the chapter on techniques of government strikes and settlements is brief and insubstantial. The brief treatment of legal aspects appears at the end and really is nothing more than an appendage to the study, not being in the nature of data treated in the main body of the analysis and not integrated with it.

SPENCER D. PARRATT.

*Syracuse University.*

*Insurgency; Personalities and Politics of the Taft Era.* BY KENNETH W. HECHLER. (New York: Columbia University Press. 1940. Pp. 252. \$3.00.)

This study, says the author, aims "to appraise the historical and geographical roots of the congressional insurgency of the Taft administration; to analyze the rise and development of insurgency in connection with the principal public issues upon which it manifested itself; and to describe the personalities, organization, and tactics of the insurgents and their opponents." The author has been more successful in his second and third objectives than in his first. He has written a lively, penetrating essay on the personalities and the parliamentary tactics of the insurgent movement. With an unusual flair for recreating the heat and drama of legislative conflict, he develops the fascinating story of the eventually successful attack by the forthright and determined leaders of the Middle West upon the arrogant, self-confident leaders of the House and Senate machines.

But insurgency is not adequately explained by parliamentary tactics, however competently described. Political insurgency in the Taft era was the reflex of a more basic economic and social insurgency. This is recognized by the author, but political insurgency interests him the more. There is a consequent loss of perspective: the personal equation and the intricacies of parliamentary tactics overshadow the impersonal forces of freight rates, interest rates, corn and wheat prices. The author does not, for instance, seem to perceive that the insurgent fight for democratic procedures in elections and in Congress was an advance skirmish in the campaign

for economic parity for agricultural, and to a lesser extent for labor, interests. Nor is there any indication that he has used the observations of Turner and Holcombe on sectionalism in understanding the economic and geographical roots of insurgency.

Within its frame of reference, the narrative is characterized by competent scholarship and effective presentation. The author has a sound comprehension of the use and quality of original source materials. His evident industry and energy have unearthed many previously untapped collections, among which his discovery of the invaluable Bristow papers deserves special commendation. The result is an analysis rich in significant detail and the most satisfactory history of the congressional aspects of insurgency available.

WALLACE S. SAYRE.

*New York City.*

### BRIEFER NOTICES

#### AMERICAN GOVERNMENT AND POLITICS

*Woodrow Wilson; The Fifteenth Point* (Lippincott, pp. 365, \$3.00), by David Loth, is a contribution to political science. It is a psychological study in political leadership, and while the historical facts covered in the biography present nothing startlingly new, the book shows how the moulding of world events by Wilson was the inevitable result of his personality, which Loth calls the fifteenth point of his peace program. The first part of the book is a penetrating study of the temperament and character traits of Woodrow Wilson, beginning with the influence of his father in the home; the second part deals with the effect of this personality upon the domestic and foreign policy of the United States during Wilson's career in public office. In the kaleidoscopic series of pictures, one sees the development of the Wilsonian traits and capacities. One marvels at the unfolding of a tremendous intellect, the forming of ideals of democratic government, the search for truth. Here is the research student whose aversion to compromise of principle stems from his conviction that his ideas are right. Mr. Loth shows the perseverance of the man, his indifference to hardship and physical discomfort, his frail physique. One sees in his struggle to democratize Princeton University his devotion to a cause, his willingness to sacrifice personal advancement and comfort to his idealism. His fight with political bosses while governor of New Jersey shows the practical unfolding of his ideas on representative government. To him, the presidency was an opportunity to work out his domestic ideas, but this he was not permitted to do because of the urgency of international problems, for the settlement of which he was unprepared by training. The last phase of the Wilson ideology was concerned with the attainment of world peace. Here one appreciates the sincerity of his conviction that a dictated peace can



only bring disaster in its wake, and his reluctance to involve the United States in a war, because he knew that "however necessary it was, war would always be just stench and blood and hatred and terror." About half of the book is devoted to the events leading to and following the first World War, and the whole represents a timely arrival at a point where again the world is wondering what the basis of a lasting peace might be. Mr. Loth had access to new material in the unpublished letters of President Wilson.—ELIZABETH WEBER.

A trained historian seldom finds himself an ambassador in a critical period. William E. Dodd did so, and he took full advantage of the opportunity, while ambassador to Germany from 1933 to 1938, to leave a careful record of what he observed. *Ambassador Dodd's Diary* (Harcourt, Brace and Co., pp. 464, \$3.50) has been well edited by his children, William E. and Martha. They have not deleted his sharp comments about many people still living—people whose activities need to be better understood in this critical time. There is, for example, the record that Senator Burton K. Wheeler talked like a National Socialist at a dinner on February 1, 1935, advocating German domination of all Europe (pp. 212, 342). In Dodd's day-by-day record of events, he was never fooled about the direction in which they were running. From the very start, he saw where Hitler was headed, and, as the evidence mounted, he continued to give, occasionally, historical addresses in which he upheld the liberal-democratic way of life which the régime was bent on destroying. There were, of course, those who thought that Dodd should have conformed more to the madness which was raging about him, but most readers will approve his steady refusal to be more than formally correct in his relations with the régime, especially with the Nazi party. No one has given as good a picture of the sham and extravagance of the diplomatic world. Dodd insisted throughout on judging its grand shows on the basis of whether something worth while had been said, and was seldom able to record anything. The abundance of real history in the book came mostly from his informal contacts. One gains the feeling that many of our own permanent foreign service men are quite willing to join the social whirl. Dodd charges repeatedly (pp. 93-94, 135, 300-01) that a clique of wealthy sons in the State Department exercises favoritism in behalf of their set, and he noted that after three years many of his subordinates in the embassy became only half-opposed to Nazism (p. 348). Needless to say, Dodd did not; he remained a staunch democrat to the end. The diary is an interesting and significant story of the plunge of the aggressors toward world power, and is an essential book for students of diplomacy and of recent history. The volume opens with a gracious and thoughtful introduction by Charles A. Beard.—DENNA F. FLEMING.

Although government deficit spending is a subject of timely interest to many students of government, Henry H. Villard's *Deficit Spending and the National Income* (Farrar and Rinehart, pp. xviii, 429, \$3.50) is not, on the whole, a book for political scientists. It is addressed in economic terms to an appraisal of deficit-creating governmental expenditures incurred during the decade 1929-1939, as a means of (1) reducing the severity of cyclical fluctuation, (2) promoting recovery from a severe depression, and (3) curing secular, or prolonged, stagnation. The author makes two distinct analyses of the case for deficit spending, one theoretical and the other statistical. His theoretical analysis, composed largely in the esoteric language of recent business cycle literature, involves extended discussions of (1) current controversies over the forces which activate the business cycle (Chapters V through VII) and (2) the theoretical effects of public net-income-increasing expenditures on which the success of deficit spending depends (Chapters IX through XVII). A chapter (XXII) is devoted to the relation between public works, public expenditure, and federal aid to localities. Arguing (pp. 67-75) that the crucial factor in the promotion of recovery is the relation of investment opportunities to savings which might go into capital balances, the author contends (Chapter VIII) that the case for deficit spending is theoretically sound both for promoting recovery after a major depression and for reducing the severity of the business cycle. He is not satisfied, however, with the case for deficit spending as a cure for secular problems, for as he later suggests (p. 367), it involves an undesirable increase in the public debt. His statistical analysis (Part III) fails to give conclusive support to the case for deficit spending. He doubts, moreover (p. 362), if the effort to improve statistical techniques "is likely to be the most fruitful direction for further research." Although admitting that deficit spending in recent years has failed to bring about full recovery (p. 366), he argues that recent experience is inconclusive because of the presence of a secular as well as a cyclical problem. Since, as he states, "we really know very little from the experience of recent years about the rôle that might be played by deficit spending in reducing cyclical fluctuations. . . ." he returns to his original theoretical position. Thus his main conclusion (p. 367) that "cyclical deficit spending . . . is eminently qualified as a device for evening out the fluctuations in investment which we have suggested are the main cause of cycles when there is no secular problem" is merely a repetition of his original contention, based entirely on theoretical assumptions.—DANIEL T. SELKO.

Erik McKinley Eriksson's *The Supreme Court and the New Deal* (Rosemead, Cal.: Rosemead Review Press, pp. viii, 252, \$2.00) purports to summarize the decisions of the Supreme Court in 112 cases having a "direct relationship to New Deal measures or policies." The author an-

nounces at the outset that no attempt is made to analyze these decisions "critically," although a lengthy introductory chapter essays a cursory survey of the legislative history of the New Deal, and a brief concluding chapter hazards a few generalizations. The various cases are grouped according to subject-matter in chapters dealing with the recovery program, financial relief, social security, reform, labor, and foreign relations. One method of exposition is rigorously followed. First, the full title of the case, including all the *et alias*, is stated in the text. Then the facts, as stated in the opinion, are summarized, including careful reference to such minor points as the precise number of trade union locals. Then follows a statement of how the judges voted. Finally, lengthy quotations from the controlling, concurring, and dissenting opinions, generally without any attempt at interpretation, are set down. This method of legal exposition, whose implements are the shears and the pastepot, Justice Cardozo once aptly described as the "tonorial" or "agglutinative." Some of the "critical" analyses attempted may be seriously questioned. Thus we are told that the Administration could have continued to enforce the N.R.A. codes, even after the Schechter decision, because the statute contained a separability clause (p. 51). The reader is assured also that President Roosevelt's criticism of the Court of 1935 and 1936 was "extraordinary" and presented only "a partial view," another view being that the Court's decisions were "inevitable" because the measures invalidated were in fact unconstitutional (p. 201). There are other question-begging generalizations in the concluding chapter, such as the assurance that the idea that justices vote in accord with their former political, economic, and social interests is "pure political buncombe" (p. 208). After regaling the reader with a number of similar observations, the author finally computes the total score for each justice—a treatment which suggests once more the very serious limitations of the quantitative method in a study of such a complex phenomenon as a Supreme Court justice. The appendices contain a good list of cases conveniently classified and a useful bibliography.—DAVID FELLMAN.

In a second edition, Dr. Wilson G. Smillie's standard work, *Public Health Administration in the United States* (Macmillan Co., pp. xiv, 553, \$3.75), has been enriched and brought to date. Noticeable is the tendency to include greater guidance to the technical administrator, i.e., a description of how to perform the Schick test, how to prepare a Wilson-Blair bisulphite agar plate to detect typhoid carriers, how to control anapheles, as well as help in identification of additional diseases having public health importance. More space is devoted to venereal diseases and their control. Two appendices—one on the educational qualifications of health officers and the other offering suggestions for a two-foot reference shelf for local

health department personnel—add significantly to the volume. From the viewpoint of a specialist in public administration and enforcement processes, the volume appears to over-emphasize substantive standards and to pay too little attention to how these standards may best be put into operation. The administrative processes, i.e., the licensing, ordering, educational, or persuasive activities of those responsible for the execution of the standards in actual situations seem somewhat slighted. Problems of relationship of health administrators to police and prosecutors; the principles governing the preparation of hearings; and the combining of attainment of high standards of public health with maximum respect for individual interest and rights are not brought into perspective as fully as they might be if the adjective aspects of health administration were given equal prominence with the substantive standards. Some chapters indicate a tendency in the direction of greater attention to administration as process. Particularly should be noted those on appraisal of public health activities, the training of public health personnel, and on budgets and budget-making. But these point particular attention to the internal inter-relationships within health departmental administration rather than to the processes and principles governing administration and citizen.—SPENCER D. PARRATT.

In his comprehensive study, *Organized Anti-Semitism in America; The Rise of Group Prejudice during the Decade 1930-40* (American Council on Public Affairs, pp. 191, \$3.00), Dr. Donald S. Strong covers 121 anti-revolutionary, anti-semitic organizations that have appeared in the United States during recent years. With the objective approach of the scholar, the author devotes the first two chapters of the volume to a survey of anti-semitism throughout the world and in the United States. This is followed by a detailed examination of the history, leadership, channels of propaganda, membership, and source of income of the eleven most important organizations and general observations on the operations of all 121 groups. The usefulness of the monograph has been enhanced by the inclusion of eleven excellent tables and full bibliographical notes. On the debit side, the absence of an index should be noted. The author observes that these 121 organizations "are far less formidable than they seem to be; many of them consist merely of a fanatic and a letterhead." However, students of propaganda are well aware that fanatics and neurotics can be effective propagandists. The validity of the author's conclusions cannot be challenged, i.e., that the future of anti-semitism in the United States will depend upon the following five important factors: periods of economic depression; war, threats of war, or any other event that results in an intensification of nationalism; growth of a strong revolutionary movement

or widespread publicity for what is alleged to be a revolutionary movement; rise to power of an anti-semitic political party in a foreign country; prosperity and international prestige of those countries that have adopted anti-semitism as part of national policy. Even with Hitler defeated, post-war conditions may result in an intensification of anti-semitism. In publishing this volume, the American Council on Public Affairs has lived up to its purpose: "dedicated to the belief that the extensive diffusion of information is a profound responsibility of American democracy."—BELLE ZELLER.

The tax system as a positive control over the concentration of economic power is the central theme of *The Taxation of Corporate Enterprise* (pp. xii, 216), Monograph No. 9, Investigation of Concentration of Economic Power, Temporary National Economic Committee. This significant report is based on the accepted philosophy that a "tax system is at once a source of public revenue and a technique of governance." Despite the traditional maxim that "taxation for revenue only" is best, the T.N.E.C. proceeds on the theory that the problems of taxation are not exclusively problems of revenue, but are problems of government and its relationship to economic enterprise. The report affirms that no tax system should work at cross purposes with the objectives of the community, but rather should contribute to whatever objectives the community has set for itself. The report contains a mass of statistical data on federal, state, and local taxation of corporate enterprise. Much of the information is presented in graphic form, and these charts, together with the numerous tables, should be interesting and useful alike to the student of government and taxation and to the citizen. Aside from the rather comprehensive treatment of the fiscal problems involved in the taxation of corporate enterprise in the United States, the report is especially significant in its treatment of the social and economic aspects of this problem. Paramount among these non-fiscal *desiderata* of a "good" tax system within a democratic framework, the report gives attention to the following: (a) the discouragement of idleness, whether of men, machines, or money, and conversely, the encouragement of full employment and utilization of resources; (b) the preservation of opportunity; (c) the curbing of monopoly, or at least the profitable fruits of monopoly, possibly including the simplification of corporate structures, and conversely, the checking of holding companies and related forms of intercorporate affiliation; and (d) the support of persons in need by relieving the tax burden on persons in the lowest income brackets. The report recognizes that these social and economic objectives are often in conflict with fiscal policies. It offers no simple and final formula for the solution of the problem, but rather attempts to strike a balance between social objectives and fiscal needs.—JOHN W. MANNING.

Those familiar with former editions of *The Municipal Year Book, 1941* (International City Managers' Association, pp. x, 662, \$5.00), edited by Clarence E. Ridley and Orin F. Nolting, know that it is indispensable for those actively working in the field of municipal government and administration. The eighth edition is no exception. As the subtitle of the book states, it is an "authoritative résumé of activities and statistical data of American cities." Each year this handbook is improved by the addition of new sections or the expansion of old ones. The 1941 edition has population data based on the 1940 census, and 234 cities have been added to the data for cities of over 5,000 population. New or additional material is included on municipal and terminal airports; financial statistics for the larger cities; sewer rental data; municipally owned electric plants; and statistics on municipal health departments. The book is divided into five parts: Governmental Units; Municipal Personnel; Municipal Finance; Municipal Activities; and Directories of Officials. The editors have been quite successful in arriving "at some standardization of content, while at the same time retaining sufficient flexibility in subject-matter to reflect the changing emphases in municipal problems." The summary articles on 1940 developments were prepared by the editorial consultants of *Public Management* and are excellent introductions for the numerous and detailed tables, giving the reader an up-to-date insight into municipal activities and functions. The editors have made every effort to make the book usable. A section, "How to Use the Year Book," explains the contents and the arrangement of materials and makes suggestions regarding the use of statistical data.—KENNETH P. VINSEL.

Recent case histories in council-manager government are *City Manager Government in Berkeley* (Public Administration Service, pp. iv, 70, \$0.50), by Arthur Harris, and *City Manager Government in Dayton* (Public Administration Service, pp. iv, 64, \$0.50), by Landrum R. Bolling. Sponsored by the Committee on Public Administration of the Social Science Research Council, investigations were conducted "on location" as part of a nationwide survey covering the operation of this type of urban government during its first quarter of a century of existence. Previous political and administrative experiences in Berkeley and Dayton are described as necessary background for the functioning of the new order introduced with the advent of a manager. Both had distinguished executives: Dayton, in Waite and Eichelberger; Berkeley, in Edy and Thompson. Berkeley's experience was peculiar in that many councilmen first came to office through appointment to vacancies. In the period between 1923 and 1938 covered by Mr. Harris, relations between the council and the manager were prosaic, and the plan was never threatened. Police and fire departments accomplished improvements. Coordination among municipal de-

partments was fostered, and agencies such as the public schools entered into closer over-all collaboration. In the auxiliary, technical services, including budgetary control and purchasing, Berkeley chalked up advances. City management here became the whetstone for sharpening the edge of municipal efficiency. The switch to council-manager government in Dayton brought a psychological turning-point which was more pronounced than was the case in Berkeley, where the preceding commission system had served the city fairly well. After getting over the hump in 1914, Dayton reverted some years later to a more political type of representation on its council than in Berkeley, and its citizens fell into a mood of complacency. Almost every election brought to power at least one councilman anxious to set the city's political house in order as he viewed it, even if it meant changing the manager. Manager Eichelberger—champion long-term manager of Dayton—showed capacity for taking the opposition into camp. In spite of these handicaps, line departments improved and extended their services, and housekeeping activities improved. Into both of these episodes of the council-manager chronicle enter factors of personality and politics as well as hard and fast results. Much space is devoted to local color, with some lack of emphasis upon the administrative process. Interesting as the ins and outs of the case histories may be, the outsider will nevertheless form his judgments on objective aspects of the record. To see the council-manager system in the large as it will be seen a century hence, it must first be examined and recorded by the laboratory method. In these monographs two experiments have been well recorded.—A. W. BROMAGE.

*In Tax Barriers to Trade* (Tax Institute, pp. viii, 344, \$2.50), a noteworthy contribution is made to the literature on trade barriers among the states. The book is the product of a two-day symposium conducted by the Tax Institute (formerly Tax Policy League), at Chicago, December 2-3, and reproduces the addresses of twenty-nine distinguished students of the general topic. The foreword is by Dr. Mabel L. Walker, director of the Institute. A general introduction is contributed by Mark Eisner, chairman of the symposium committee. The volume is divided into six parts: (1) "The Menace of Tax Barriers to Trade"; (2) "Highway Trade Barriers"; (3) "Commodity Trade Barriers"; (4) "Marketing Trade Barriers"; (5) "Tax Barriers to International Trade"; and (6) "What Can be Done about Trade Barriers"? The book contains an index and a well-rounded bibliography. No barrier to trade seems to have been overlooked. Every impediment to interstate trade receives full attention and is discussed frankly from many points of view. There is substantial agreement on the advantages of free trade among the states and the evils of legislative and administrative acts which restrain that trade. Brought to light

is the fact that trade barriers are disappearing at a rapid pace through the efforts of the Council of State Governments and its affiliated organizations, the federal government, and the governors and legislators of a number of states. The general public has also interested itself within recent years and has brought the force of public opinion to bear against present and pending legislation on the subject. It is significant that no additional trade barrier acts of any real importance were passed by the state legislatures in the sessions of 1939 and 1940, and that many statutes were repealed or modified; and altogether it is apparent that progress is being made toward the reestablishment of a free trade area in the United States.—CHARLES J. ROHR.

For those who, like this reviewer, had until the outbreak of the present World War expected from the enlightened international economic policies sponsored by Cordell Hull much larger benefits than were realized, Grace Beckett's study of *The Reciprocal Trade Agreements Program* (Columbia University Press, pp. xv, 142, \$2.00) will be both useful and welcome. Based on a doctoral dissertation written at the Ohio State University, this volume discusses the considerations and precedents leading to adoption of the program, describes the principles and procedures followed in negotiating agreements, analyzes the concessions obtained and granted by the United States, and concludes with an appraisal of the significance of the program for American foreign trade through the year 1939. How to secure material concessions on the exports of one's own country without at the same time granting reductions on imports on a scale likely to cause dislocations in the home economy, and meanwhile to insure that the indirect effects of any bilateral pact on the total movement of world trade will be of salutary character—this is a problem of vast complexity; and Miss Beckett throws a strong beam of light upon it. To understand the use of the chief supplier principle, the importance of reclassifying products in the paragraphs of a tariff schedule, and the ways in which most-favored-nation treatment must be planned with reference to the allocation of quotas, changes in systems of internal taxation, and the control of foreign exchange, is to appreciate the severe limitations within which the whole program has had to operate. There is real merit in the closing section in the care taken to make clear the assumptions on which statistical measures of the effects of the program are made to rest. Positive gains have not been great, but "as a stop-loss device, the program has been important."—JOHN A. VIEG.

// The familiar theme of the trend toward concentration of power in the American national government receives the attention of Naresh Chandra Roy in *The Federal System of the United States of America* (University of



Calcutta, pp. xii, 308). Beginning with an account of the circumstances which gave rise to the American plan of federalism, the author surveys and analyzes the factors responsible for the rise of national authority at the expense of state power. To illustrate current practice, chapters near the end are devoted to the National Labor Relations Act, the Social Security Act, and the federal grant-in-aid system. Although he emphasizes the importance of the expanding powers of the central government, the author is not convinced that local particularism is dead in the United States. He believes that the American governmental system will continue for some time essentially federalistic in character. Significant indices of future trends are seen in the newer techniques of national-state and interstate coöperation. While the book does not present ideas that are new or distinctive, and in some respects is even elementary in content, it provides the general student with an interesting survey of the development of the theory of American federalism.—JOSEPH E. KALLENBACH.

That the police patrol force, despite the tremendous innovations in police organization and operations, remains the backbone of police responsibility for "performance of the total police job" is the considered opinion expressed in O. W. Wilson's *Distribution of Police Patrol Force* (Public Administration Service, pp. iii, 27, \$1.00). This excellent account of the experiment of distribution of the police of Wichita, Kansas, and San Antonio, Texas, in 1931-32, on the basis of proportionate need, deserves a careful reading by every police administrator interested in providing maximum police service at the time and in the place needed. The lack of objective standards for the determination of the size of the police force necessary for adequate service and protection and its distribution chronologically and geographically are analyzed, resulting in a suggested scheme of police manipulation so as to increase man hours in the areas of greatest hazard and during the periods, day and night, of greatest need. Certain difficulties would surely arise if such a program were adopted by the larger metropolitan departments, but the principles outlined and the experiment described offer police organizations an excellent opportunity to increase their effectiveness.—J. P. SHALLOO.

*Six-Year Capital Improvement Program for Maryland* (Maryland State Planning Commission, Publication No. 30, pp. 169, mimeo., \$0.25) represents a joint effort of the State Planning Commission and the Department of Budget and Procurement, with technical financial assistance from the National Resources Planning Board. The objective is the improvement of administrative programming of public works on a long-time basis, and the report properly emphasizes that a capital improvement program is not only a question of what state departments need but also of what the

state can afford. The publication contains elaborate financial displays of the state's property tax revenue and debt condition, against which are matched capital improvement needs of  $18\frac{1}{2}$  millions submitted by departmental and institutional heads for the years 1941-47. The final program recommends a little more than nine millions, spread among the bienniums in the proportions of forty-five, eighteen, and thirty-seven per cent respectively. By reducing the state's capital needs to some definite schedule, the "feast and famine" era may be brought to a close and departmental requests coördinated into the program of the whole state. Too much emphasis can hardly be given the report's warning that the proposed program must be reconsidered and revised biennially. It remains only to see what executive and legislative attention the report will command.—HOWARD M. KLINE.

*The Laws and Joint Resolutions of the Last Session of the Confederate Congress (November 7, 1864-March 18, 1865), Together with the Secret Acts of Previous Congresses* (Duke University Press, pp. xxiii, 183, \$2.50), edited by Professor Charles W. Ramsdell, is published in memory of William Kennedy Boyd, who assembled at Duke University the Flowers collection of source materials in Southern history. Professor Ramsdell found in the Flowers Collection ninety-two manuscript enrolled acts passed at the final session of the confederate Congress. After exhaustive research, he was able to supplement this original nucleus with the texts of the approximately one hundred missing acts, thus producing a unique and complete edition of hitherto unpublished "last laws." The result is a valuable reference work, including a useful index and a scholarly note on bibliography. It is not, however, "dry-as-dust"; the scholar with historical imagination can sense the attitude of that harried session when Congress had to provide for its own removal should "the public emergencies" make remaining "impolitic." The political scientist will be specially interested in these last efforts of civil authorities to maintain the public routine even when military defeat was imminent.—MARIAN D. IRISH.

The fact that William E. Mosher and J. Donald Kingsely have revised their *Public Personnel Administration* (Harper and Brothers, pp. x, 671, \$5.00) within five years after the first edition was published reflects the rapid expansion of the merit system in recent years. This expansion has involved more than the application of the merit basis of appointment to new positions and new jurisdictions; even more striking is the broadening scope and increasingly technical character of the activities of personnel agencies. Descriptions and illustrations of the latter trend constitute a major portion of the new material found in the revised edition of the text. Only a few changes have been made in arrangement and emphasis. The

discussion of oral examinations and personal investigations has been expanded to make up a new chapter; and the public relations phase of personnel administration has been given a more thorough consideration.—EDWIN O. STENE.

Of much interest and significance to students of state and local government and administration is a publication of the bureau of municipal research at the University of Texas entitled *Units of Local Government in Texas* (Austin: University of Texas Press, pp. 221, on request). The study is a comprehensive presentation of the origin and functions of units of government in Texas, including the state itself, counties, cities, school districts, and special districts. Of particular value are the river authority maps, soil conservation maps, and the county group maps indicating in detail the various units in each county. The study is strictly informational in nature, with the exception of a very valuable discussion of redesigning the state-local pattern.—DAVID W. KNEPPER.

In *Government and Politics in Alabama* (University of Alabama: University Supply Store, pp. 210), by William V. Holloway and Charles W. Smith, we have essentially a manual of the Alabama constitution. Like the constitution of Alabama itself (which appears in full as an appendix), the manual is somewhat involved and uninspiring. It handles material fairly but factually, often with little imagination or flourish. Consequently the living, functioning government is partly obscured in spite of attempts to enliven the text by informative, often peppery, editorials from Alabama newspapers. The authors make good use of the 1932 Brookings Institution study of Alabama government.—GARLAND DOWNUM.

#### FOREIGN GOVERNMENT AND POLITICS

David Thomson's *The Democratic Ideal in France and England* (Cambridge: At the University Press, pp. viii, 134, \$1.25) is a popularized comparative analysis of both concepts and institutions, approached historically rather than philosophically. Resemblances appear chiefly in the form of historical parallels; differences are found to some extent in ideas, but principally in political machinery. Comparisons and contrasts are presented under four headings: ministerial responsibility, separation of powers, the rule of law, and economic democracy. The author rather surprisingly concludes that France is (was) more democratic than Britain because of the greater political responsibility of her ministry to Parliament and of her Parliament to the electorate, and the greater "legal responsibility of all public authorities to the administrative courts." Burke's "lofty and seductive theories" of representation and the disciplinary

power of British party organizations over the representative receive their share of criticism. Interesting are the view that democracy is, after all, "artificial," the admission that there is no true separation of powers in Britain, and the claim that Montesquieu really advocated the "distribution" or "balance," rather than the "separation," of powers. The chapter on "economic democracy" is disappointing; it fades into generalities and platitudes. If the author's purpose was "to restate the [democratic] ideal in terms relevant to the times," he has not succeeded. This is a solid, scholarly little book, but it is scarcely likely to become a powerful weapon in the war of ideas. It is too completely historical and much too reluctant to come to grips with present realities.—CARLTON C. RODEE.

Eight studies on national trends in Canada since 1914 are incorporated in the recent volume edited by Chester Martin entitled *Canada in Peace and War* (Oxford University Press, pp. xvii, 244, \$1.75). Mr. Martin's paper deals with four major factors constituting the essence of Canadian nationhood, developing their changes from the first World War to date. D. G. Creighton paints a grim picture of the federal form of government in its Canadian economic setting. The growing divergence between provincial interests is seen as the factor responsible for the lack of national integration in peace-time Canada. To support this position, Mr. Creighton cites the insistence of the province of Ontario upon the retention of the compact theory of confederation in connection with amendments to the British North America Act, and cites further the decisions of the Judicial Committee of the Privy Council upon such things as the National Minimum Wages Act, the Limitation of Hours Worked Act, and the Unemployment and Social Insurance Act. The third paper, entitled "Economic Trends," by H. A. Innis, appears to be the most thoughtfully constructed one in the set, although the chapter by Mr. Glazebrook is also to be particularly commended. Papers not here mentioned in detail, due to limitation of space, are "Population Problems and Policies," by V. W. Bladen; "Canada and the Last War," by F. H. Underhill; "Canadian and Imperial War Cabinets," by R. Macgregor Dawson; and "Democracy in the Overseas Dominions," by Alexander Brady. While many of the book's conclusions are open to question, they are nevertheless provocative and interesting.—FRANCES REINHOLD FUSSELL.

Exceptionally timely from the standpoint of present American needs is C. F. Fraser's *Control of Aliens in the British Commonwealth of Nations* (London: Hogarth Press, pp. 304, 12s.6d.). This work was carried out with the assistance of the Sheldon Fund of Harvard University and the Social Science Research Council. The book is effectively organized, with separate chapters devoted to the policies and practices regarding aliens during

the past several years in each of the countries dealt with—the United Kingdom, Eire and Northern Ireland, Canada, Australia, New Zealand, and South Africa. A final chapter surveys developments due to the present war. There is a brief bibliography, and a full table of the statutes and cases cited. Noteworthy also is the illustrative data in the appendices, comprising the texts of several of the most typical statutes and orders. The author has sought throughout the study to determine not only the law and procedure, but also the underlying policies which have been applied. The treatment, in general, comprises a systematic analysis of the statutes, orders, and court decisions which constitute the framework of alien control in each country. As regards Britain, perhaps the most striking feature is the completeness of the discretion vested in the Home Secretary in matters of alien administration. Incidentally, the author also cites various amusing instances of the characteristic conflict between that secretiveness thought by officialdom conducive to the public interest and the irritating, irreverent curiosity of the researcher—victory resting usually with the former. As regards the Dominions, the salient feature is the complicated character of citizenship, due to the historical background of the Commonwealth—first, control of immigration, even of British subjects, was devolved upon each Dominion; latterly, determination of citizenship has been similarly devolved. Actually, Britain herself is the only member of the Commonwealth which does not discriminate against British subjects coming from some other part thereof. Finally, as to the effects of the present war on the control of immigration, needless to say, any deductions would as yet be tentative.—A. GORDON DEWEY.

*Regulation of Economic Activities in Foreign Countries* (Washington, D. C.: Gov't Printing Office, pp. 168) was prepared by a number of government economists for the Temporary National Economic Committee. The study presents an analysis of government regulation of economic activity in Great Britain, Germany, France, Argentina, Brazil, Chile, and Mexico. The discussion concerning Great Britain is limited to the important coal and cotton industries, in which government intervention was undertaken in an attempt to adjust them to the radically altered conditions developing after the World War. Government intervention in other British industry has appeared, and it is prophesied that there will be a further extension of the movement. The section on Germany—the most interesting and enlightening in the entire monograph—is divided into two parts, one dealing with the historical development of the concentration movement in industry, and the other with regulatory experience under National Socialism. The extent of detailed government control under National Socialism is surprising. Every segment of economic activity has been subjected to government supervision, and it appears that little free-

dom of action and initiative exists. The remaining sections dealing with Latin America show how the unbalanced economies in these countries, particularly vulnerable to economic depression, has necessitated the intervention of the government. As in other countries, the depression of the thirties intensified government control in the Latin American areas.—NATHAN L. SILVERSTEIN.

#### INTERNATIONAL LAW AND RELATIONS

During the past few years, a considerable literature has developed around the general theme of the Axis Powers, totalitarianism, and the menace that these states and programs hold for America. If any final and convincing proof of the reality of this danger were needed—and unhappily for this country, it is needed—it may be found in Robert Strausz-Hupé's *Axis America* (G. P. Putnam's Sons, pp. xvii, 274, \$2.50). The well-conceived and brilliantly executed design of the author is first to explain the basic factors of the Nazi-Fascist psychology and outlook and second, by a liberal use of source material, to show how the Nazis and their accomplices plan to destroy the United States from within, and thus secure world domination. The first object the author quickly achieves by a clear but brief analysis of the ideas of some of the older writers, such as Hegel, Treitschke, Nietzsche, Chamberlain, Gobineau, Moeller van den Bruck, and Spengler, and of the contributions of the later, more important, geopolitical school, especially Haushofer and Banse. The author's second object is attained by describing the propaganda technique of the Nazis, the strategy and tactics of infiltration, and the vantage points, both within and without the United States, from which the great attack is being launched. Especially illuminating is the picture built up by the Nazis of social and economic conflict, disunity, and moral degradation in this country. In short, the United States is regarded by the Nazi-Fascist school as being neither a nation nor a state, and as being, in consequence, peculiarly subject to destruction from within by the weapons of Nazi propaganda and the Fifth Column. The author has done his work so well that this reviewer desires merely to suggest that this amazing record might have had even more interest for intelligent and patriotic Americans had it included a few extracts to show the high regard entertained by the Nazis for certain Americans who advocate isolationist policies which, if adopted, would probably lead quickly to the results planned by the master minds of the Axis Powers.—CHARLES A. TIMM.

"America Must Fight." These three words conclude Major Malcolm Wheeler-Nicholson's *America Can Win* (Macmillan Co., pp. 246, \$1.75). Starting with the assumption that an overwhelming majority of the American people support aid for Britain short of war, the author devotes

two-thirds of his study to an impressive exposition of the logical and practical weaknesses of this position. By insisting upon aid short of war, the isolationists, he asserts, are inconsistent in that "they are admitting that the British are fighting our battle." The arguments for aid short of war rest on one or more of three suppositions: (1) that, regardless of what happens abroad, we can successfully defend ourselves; (2) that aid to Britain will enable her to win the war; and (3) that Britain, even without help, will emerge as victor. Relying chiefly on non-technical language, the author makes a painstaking analysis of these premises from the standpoint of a military expert and discards each as factually untenable. This is followed by an attack upon the opinion of die-hard isolationists who hold that it matters little to America whether Britain or Germany wins in Europe. The Nazis have informed us openly that we are on their "program," and America is militarily vulnerable. The security of this nation "depends on the absolute necessity of the British Empire continuing as a belligerent." Insisting that there is no choice of war or peace, but that America must fight, the author presents what is to a layman an impressive blueprint of the military and non-military steps this country can take *now* with some guarantee of positive and effective results. The reviewer regrets that repeated lapses by the writer into a flowery, even gaudy, mode of expression detract somewhat from the strength of his book.—  
VERNON A. O'ROURKE.

The May, 1941, issue of the *Annals of the American Academy of Political and Social Science* (pp. 242, \$2.00), under the special editorship of William P. Maddox, is given over to consideration of the problems of relationship of America and Japan. There are twenty-eight contributors writing on a wide variety of topics. The first section has nine articles, organized under the head of "Bases of Japan's East Asiatic Policies." The second section, "Factors Affecting America's Far Eastern Policies," has six contributors. There are two articles on "The Problem of Cultural Divergence" and seven concerned with the "Latest Phase of American-Japanese Relations." The symposium is concluded with three contributions on the problems of "The Immediate Future." Four of the articles are by distinguished Japanese. They should be read by Americans with special interest, and also with special care, as they accurately define the present objectives of Japan's policy, even though they follow current Japanese practice of using such words as "coöperation" and "order" with a reverse from the customary meaning. The other articles help to supply the data on the basis of which a conclusion can be reached as to whether we should acquiesce. The nature of the topics treated has resulted in some of the articles being more expressive of the opinion of the writer than others lending themselves more fully to objective factual treatment. A high level

both of tone and of writing is, however, maintained throughout. The editor has done an excellent job in defining the topics so that, in the total treatment, few aspects of Japanese-American relations are left untouched, and in securing people competent to deal with each objectively and dispassionately as well as informatively.—HAROLD M. VINACKE.

As in the preceding year, *International Law Situations, 1939* (Washington: Gov't Printing Office, p. vii, 162) was prepared by Payson S. Wild, Jr., professor of international law at Harvard University. The topics considered are: (1) neutral duties and state control of enterprise; (2) neutrality problems: distress, submarines, and qualified neutrality; and (3) contiguous zones, airplanes, and neutrality. Limitations of space permit reference to only a few of the interesting views expressed. Among others, the conclusion is reached that the question as to whether or not, under the law of neutrality, modern state-owned or controlled instrumentalities of business are to be forbidden to deal with and sell to belligerents, ought to be determined by "the nature of the deal, whether political or commercial, and not the fact of government ownership or control . . ." (p. 10). In other words, acting in its "private capacity," a neutral state may lawfully deal with belligerents, and "the criterion as to private capacity is the amount or extent of political bias or influence manifest in any given arrangement between a belligerent government and a corporation or agency controlled by a neutral state" (*ibid*). As regards a state which abandons strict neutrality in favor of a qualified neutrality (as, e.g., the United States is bound by its own so-called neutrality act of 1939 to do *vis-à-vis* Latin American republics in specified circumstances), it is asserted that such "failure of a neutral to discharge its obligations in all respects does not necessarily mean that it is deprived of all neutral rights or has assumed a position of complete partiality. Any sort of unneutral conduct does open the way for reprisals by the injured belligerent party" (p. 55). Concerning the so-called neutrality zone proclaimed by the American republics, the Naval War College classes conclude that the "Declaration of Panama is not a part of international law. Neutral jurisdiction for defense purposes over a part of the ocean extending 300 miles from the coast is without precedent and has not been generally accepted. There is agreement probably upon the principle but not upon its application to such a tremendously wide belt" (p. 80). Included in the volume are incidental discussions of contraband, the British "blockade" and treatment of U. S. mails, the *Altmark* and *City of Flint* cases, as well as fairly extensive appendices containing significant government documents relative to the war.—VALENTINE JOBST III.

To many laymen, the more complex economic ramifications of totalitarian war constitute virtually a no-man's land. To meet this need, several



economists have attempted to make intelligible to the lay conception the basic economic factors involved in the present war. A highly satisfactory move in this direction has been made by Geoffrey Crowther, editor of *The Economist*, in his *Ways and Means of War* (Oxford University Press, pp. v, 184, \$1.25). The book grew out of two pamphlets previously contributed by Mr. Crowther to the series of Oxford Pamphlets on World Affairs. Present-day war is basically industrial, and is more influenced by economics than by elements of strategy. The first World War ended as it did because the Allies, man for man, had more guns, tanks, and aircraft than their opponents; and the same forces of industrial capacity are likely to prove conclusive in the present conflict. The author reviews the British and German economic systems, treating in some detail the seven things chiefly needed for the prosecution of war: man-power, materials, industrial capacity, ships, power to buy abroad, food, and money. The Nazi dictatorship has not worked economic miracles, although the Nazis have been "shrewd and prompt in mobilizing their limited resources." German autarchy, however, has wasted man-power in the attempt to become self-sufficient. One of the more serious gaps in the British situation has been the delay and hesitancy to mobilize a trained, publicly maintained, industrial army alongside the fighting army. "Wars," maintains Crowther, "are won by men and materials, by having the right kinds and quantities of men, trained to the right jobs, equipped with the right materials, in the right places at the right times." The British people can count on the present totalitarian war to eat up more than half of the total income of the nation. But despite this vigorous prostration of the normal economic system, Crowther believes that, given a British victory, the war will not "necessarily leave behind it a legacy of permanent impoverishment." On the whole, it is argued that "war does not greatly reduce a modern community's ability to produce wealth." The more permanent economic damage from war results from the social dislocations which are war's by-products—especially unemployment and redistribution of income as between different classes of the population. These dislocations may be both severe and dangerous, but they are not synonymous with impoverishment. By and large, the author comes to a not too pessimistic conclusion regarding the chance for an ultimate British victory. He does not conclude that Britain *will* win, but, given proper management, restricted consumption, and the economic weight of the United States, that it *can* win.—IVAN M. STONE.

Professor Antonio Gómez Robledo's *The Bucareli Agreements and International Law* (National University of Mexico Press, pp. xiii, 229; trans., Solomón de la Selva) purports to be a "juridical analysis" in the light of international law of these agreements concerning the United States-

Mexican oil and land problems. Aware of popular dissatisfaction in Mexico, Professor Gómez felt obligated to write the book because "it is the duty of the experts, . . . to transmit their findings to the people, proving popular suspicions right, . . . and so creating, in a word, a movement of opinion from above and below which shall put an end to conditions deeply injurious to the national dignity" (p. 201). The author attempts to make out that there is a basis in international law for the opinion that when international agreements conflict with municipal law the former must give way. After many pages of juridical analysis, he finds the need for something more than international law on which to base his case. Then it becomes "a matter of reacting as we should to a law of our history, the fatality of which only patriotism can prevent . . . . On reaching this point, law becomes mute in order that morality, that engendered it, may settle the debate with that fullness of jurisdiction which law cannot encompass" (p. 204).—WILLIAM M. GIBSON.

To some persons, the challenge of Nazi totalitarianism represents "The Wave of the Future"; others regard it merely as an undertow from the past. Taking his title from Thomas Jefferson's description of the menace of the Napoleonic system, Professor Edward M. Earle, of the Institute for Advanced Study, has written an eloquent plea to the American people to stand firmly *Against This Torrent* (Princeton University Press, pp. 73, \$1.00). Within the compass of a few pages, he has compressed a carefully reasoned analysis of the prospective effects of a Nazi victory on the American way of life, together with a convincing demonstration that a policy of full resistance is in complete accord with, and not in violation of, the fundamental and traditional principles of American foreign policy. To those who wish to take refuge in a policy of passive defense based on a belief in the invulnerability of the United States to hostile invasion, the author points out that "it may be doubted, in fact, whether talk of physical invasion has any but minor relevance to the issue. In totalitarian strategy, invasion is not a first step but a regrettable and unavoidable last resort. It is something to be undertaken only after all other methods have been exhausted." Similarly, those who rely on the wisdom and warnings of the founding fathers to justify a policy of non-intervention will find in these pages a host of quotations from them which will afford scant comfort. Clear, temperate, and forceful, this slender volume is a welcome addition to the literature of the present controversy over foreign policy.—GRAYSON L. KIRK.

Italy's position in Eastern Asia has never in modern times entitled her to rank there as one of the so-called Great Powers. Nevertheless, during very recent years, her political relationships with both China and Japan have not been without significance. In his *Italy's Interests and Policies in*

*the Far East* (New York: Institute of Pacific Relations, Inquiry Series, pp. xiii, 91, \$1.00), Frank M. Tamagna, instructor in economics at Xavier University, Cincinnati, presents what is admittedly a small and undramatic story. His brief study includes: a summary of Italy's position in the Far East before 1922; political relations with China and Japan, 1922-1940; commercial relations with the same countries; relations with southeastern Asia; economic interdependence of Italy and the Far East; and a chapter of tentative conclusions. The most valuable parts of the study are the chapters on commercial and economic affairs. The chapter on political relations does not do much toward clarifying the goal, if any, of Italian contemporary policy in the Far East.—PAUL H. CLYDE.

#### POLITICAL THEORY AND MISCELLANEOUS

According to the synopsis of theme printed on the jacket of Huntingdon Cairns' *The Theory of Legal Science* (University of North Carolina Press, pp. 146, \$2.00), the author therein demonstrates that his concept of law as a function of disorder frees the jurist from "mechanistic explanations founded upon parallels drawn from physics." The idea seems to be that a natural social order is, from a teleological standpoint, disorder; the legal order is an achievement of invention which in turn cannot be, or at least has not been, satisfactorily accounted for on mechanistic grounds. This conclusion is not, however, a prelude to the recognition of ethical precepts as basic for legal science. Mr. Cairns is looking for statements of "invariant relationships among facts" as the end of scientific research; he thoroughly appreciates the desirability of establishing correlations between other orders of society and the law; and, finally, he rejects the suggestion that a scientific proposition about law need contain an "ought." While it is true that he also talks somewhat vaguely about organizing the results of research into a coherent system "in conjunction with a rational theory of ethics," in the main his voluntarism finds merely tangential expression in (a) a defense of the free use of hypotheses, and (b) a critical attitude toward certain deterministic theories. In this connection, the reviewer found his treatment of "Monistic Causality," "Functional Dependence," and "Equilibrium" particularly suggestive. Not until the last of the ten chapters in the book does Mr. Cairns confront the underlying problem left pretty much in the air while the author carefully examines various sociological and anthropological methodological devices. If, as he recognizes in this chapter, there is a difference between jurisprudence as an inventory of value judgments and jurisprudence as a valuation of value judgments, and if, as he also recognizes, the former is the true sphere of jurisprudence—what significance has the recognition of the value element in the behavior studied for the method of identifying data? In other words, does he find these values "out there" in the "objective" world presup-

posed by empirical science? And, if so, how can the recognition of value be more than a temporary expedient pending fuller scientific knowledge of the human psyche? Because Mr. Cairns does not undertake to answer such theoretical questions, nor, on the other hand, to demonstrate on the practical side how his conclusions as to method may result in any more fruitful categories for the study of legal phenomena than are already employed, the reviewer confesses to a feeling of disappointment in the book despite the wealth of erudition it displays.—KENNETH C. COLE.

Designed for college classes, while deserving of wider reading, *Masters of Political Thought* (Houghton Mifflin Co., pp. ix, 302, \$2.25), by Michael B. Foster, tutor of Christ Church and university lecturer in philosophy, Oxford, is the first of three volumes projected as a series. Dr. Foster's volume—Plato to Machiavelli—will be followed by a second—Machiavelli to Bentham—preparation of which has been entrusted to Dr. William T. Jones, of Pomona College, and by a third—Bentham to the Present—to be prepared by Professor McGovern of Northwestern. Professor Sait, in a convincing little editor's introduction, wants to get away from the conventional textbook method of the teaching of political theories and to resort more to the originals. One may heartily agree, provided that adequate commentaries are interspersed among significant passages as selected from the sources, if not adequately by the instructor himself, then with the aid of precisely such a book as this. No one but an expert in the field could do the job so as to be worth doing at all. Foster's volume is a clear and instructive analysis of the essentials in the sources chosen. Only the great figures, or in one or two instances the most representative, of a period (such as Cicero), are included. The belated demand now rising in American universities, against the background of the present world conflict, that we seek to recover the bed rock of our culture, and that there be recognized some common body of significant knowledge with which every educated person would have some acquaintance, should prepare a welcome for this kind of contribution. The reviewer will not quarrel here with the interpretation given the natural law conception as being essentially a post-Aristotelian growth. The comments upon Plato, Aristotle, Cicero, Augustine, Aquinas, and Machiavelli give their teachings fresh life for the present.—WALTER SANDELIUS.

In *Centralized vs. Decentralized Government in Relation to Democracy* (New York: Bureau of Publications, Teachers College, pp. vii, 69, \$0.75), sub-titled, "A Review of the Arguments Advanced in the Literature of Various Nations," Paul Studenski and Paul R. Mort present a compendium of the views of students of political science here and abroad on the merits and shortcomings of centralization and decentralization. Most of the text consists of quotations, many from quite bizarre sources, classi-

fied and strung together with running comment somewhat after the manner of a high school debating manual. The familiarity of the authors with the literature which the quotations represent is indicated by the statement that American political scientists "speak extensively of state supervision of localities, but scarcely at all of federal supervision over states" (p. 47); their attention might be called to the fact that Miss Clark's *Rise of a New Federalism* has a "selected bibliography" of twenty-one pages. The utility of the collection, and of the publication, of the material is entirely beyond the comprehension of this reviewer. The authors offer their document "to the general public" with the hope that it will help "to clarify" the issue and "to lay the groundwork for further significant research." The material is not in the most suitable form for the education of the "general public"; "the issue" is no clearer than it was before the quotations were placed in juxtaposition; and anybody setting out to do "significant research" would already be acquainted with the ideas and views collected. The chapters of the monograph originally appeared serially in the *Teachers College Record*.—V. O. KEY, JR.

The last publication of the International Labour Office while Mr. John G. Winant was director is entitled *Studies in War Economics* (P. S. King and Son, pp. 199, \$1.00). In it are articles on the following subjects: "Economic Organization for Total War, with Special Reference to the Workers"; "Who Shall Pay for the War?"; "Relative Wages in War-time"; "The Control of Food Prices"; "The Place of Housing Economy in War Economy"; and "The Effect of the War on the Relative Importance of Producing Centers, with Special Reference to the Textile Industry." The first of the studies is, in the opinion of this reviewer, especially stimulating. The author mentions four important changes in production in war-time which he calls changing techniques of warfare, the problem of bottlenecks, working hours and shifts, and war production and government control. In addition to discussion of changes in consumption and the effect of war on foreign trade, there is a detailed treatment of the methods of restricting consumption. Among the author's conclusions are these: "The workers are at present engaged in a war the outcome of which will decide the future of labor and democracy not only in our time but for generations to come. They must overthrow the Nazis and Fascists, whatever the cost, if they are to preserve the most important gains which they have made since the downfall of the feudal system. Consequently, efficient economic organization for war is the main problem facing organized labour at the present time." And again! "Inflation is the least equitable and efficient of these methods [for restricting consumption], and large-scale voluntary lending tends to produce unfavorable effects on post-war distribution of income; hence a combination of taxation, compulsory

lending, and rationing, with some provision for voluntary lending, appears to be the most equitable and efficient method of restricting consumption."—JOHN G. HERNDON.

Not without warrant are we impressed by the skillful research of crime investigators or the elaborate reasoning of the legalist; yet both are surpassed by the historical scholar who ransacks the whole world for his evidence and ponders it with an inexhaustible ratiocination. True, the results in the latter case may sometimes appear slight, even be slight; but that is a different matter. An example is afforded by Kurt von Fritz's *Pythagorean Politics in Southern Italy* (Columbia University Press, pp. ix, 113, \$2.00). The problem is the nature of Pythagorean political activity, mainly in the fifth century B. C. And the point established, on the basis of numismatic data and reinterpretation of ancient accounts (one in particular, by Aristoxenos), is that a reputedly local and restricted rebellion was in reality a widespread revolt against Pythagorean domination. The inference follows that the Pythagoreans at that time did exercise considerable political power, only not, apparently, as official rulers but also through their influence in some such fashion, the author guesses, as the Free Masons wielded power in the eighteenth century.—L. M. PAPP.

Professor Weldon A. Brown has made a very careful and detailed investigation of an aspect of the American Revolution which has received little attention from scholars. *Empire or Independence; A Study in the Failure of Reconciliation, 1774-1783* (Louisiana State University Press, pp. ix, 338, \$3.00) examines minutely the various efforts made to settle by negotiation the quarrel between Great Britain and the United States. The author concludes that the earlier offers made by Lord North were inadequate and played into the hands of the minority who wanted independence and not a peaceful settlement. The final proposals of 1778 would very probably have been accepted a few years earlier, but they came too late.—LENNOX A. MILLS.

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CLYDE F. SNIDER  
*University of Illinois*

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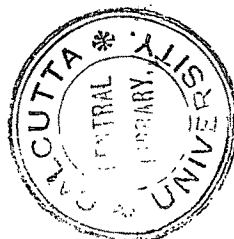
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## BENTHAMISM IN ENGLAND AND AMERICA

PAUL A. PALMER  
*Stanford University*

The main purpose of this paper is not so much to measure the impact of utilitarianism on American political thought as to explain why utilitarian influence was so slight. The question I am seeking to answer may be phrased as follows: How did it come about that utilitarianism, the main current in English thought for two or three generations, was little more than a series of ripples, or at most a weak cross-current, on this side of the Atlantic? The problem becomes more puzzling when one reflects that the period of the rise and growth of utilitarianism in England (the first three or four decades of the nineteenth century) was an era in which intellectual relations between the two countries were especially close and one in which movements of political and social reform ran parallel courses. Quite reasonably, too, one might suppose that the qualities of Bentham's thought which contributed to its spread in England would have insured its enthusiastic reception here. A doctrine which contemptuously rejected tradition, preached hard-headed, calculating practicality, conceived of the individual as an isolated atomistic unit, and which in all its aspects and phases appealed to the virtues and limitations of the middle-class man of affairs—such a doctrine, one might think, would have flourished on nineteenth-century American soil.

As preliminary to a direct attack on the problem, some definitions or distinctions are in order. "When I mention religion," said Parson Thwackum, "I mean the Christian religion; and not only the Christian religion, but the Protestant religion; and not only the Protestant religion, but the Church of England." Likewise, when I mention utilitarianism, I mean Benthamism; and not only Benthamism, but crude Benthamism; and not only crude Benthamism,

but that part of it which opposes to natural law and natural rights the principle of utility or greatest happiness. To be more explicit, in distinguishing between utilitarianism and Benthamism, I am excluding from consideration the influence upon American thought (which was no doubt very marked) of such utilitarian treatises as Paley's *Moral and Political Philosophy*. Nor is it part of my purpose to analyze the relation to American theory of that refinement or adulteration of crude Benthamism represented by the writings of John Stuart Mill. My discussion of Bentham's theory of rights will, however, necessitate some reference to John Austin's treatises on jurisprudence.

Still by way of introduction, it is necessary to touch briefly on the development of Bentham's concepts of natural law and natural rights. I say "development"; but, speaking strictly, there was only a series of restatements, covering a period of more than half a century, of the doctrine set forth in the *Fragment on Government* (1776). The character of Bentham's thought as a whole, to be sure, underwent important modifications. Thus until about 1808 he was much more interested in legal and penal reform than in political theory; and despite his association with Lord Lansdowne and other Whig leaders, he remained a Tory in politics. In 1808, as a result of the Panopticon fiasco and of his association with James Mill, he turned his attention to political questions; and within two or three years he became a champion of parliamentary reform, universal suffrage, and radical republican democracy.<sup>1</sup> It may be added that he also became an admiring student of what he called the "United States representative democracy." But although he thus came to accept the program, he persisted to the end in his rejection of the principles of the exponents of natural rights. If, as John Morley said, Burke changed his front but never changed his ground, of Bentham it might truly be remarked that he changed his ground but did not change his front.

In order to document this remark and to provide a background for my main thesis, I must deal, however briefly, with the complicated and wearisome topic of Benthamite bibliography.<sup>2</sup> Although

<sup>1</sup> See Élie Halévy, *The Growth of Philosophical Radicalism*, English translation by Mary Morris (New York, 1928), pp. 251-264.

<sup>2</sup> See Halévy, *op. cit.*, pp. 522-545 (annotated bibliography by C. W. Everett), and Leslie Stephen, *The English Utilitarians* (3 vols., London, 1900), Vol. 1, pp. 319-326.

Bentham was a constant and indefatigable writer, he published (or others published for him) spasmodically, belatedly, and bilingually—a fact not wholly without bearing on the nature of his influence here and elsewhere. In the first and most readable of his productions (published anonymously), the famous *Fragment*, he grounded his criticism of Blackstone on the utility or greatest-happiness principle, rejected natural rights by implication, and expressly rejected the law of nature as “an abuse of language.”<sup>3</sup> Once its authorship was disclosed, the *Fragment* gave Bentham a temporary fame in his own country, and won him influential friends; but it seems to have been almost entirely ignored on this side of the ocean. Certainly it did nothing to lessen the tremendous vogue of the *Commentaries* here; and I find no reference to it in American political literature prior to 1873. “For the philosophy of law,” wrote Oliver Wendell Holmes, Jr., in that year, “the *Fragment on Government* and Austin’s lecture are worth the whole *corpus*” [of Roman law!]<sup>4</sup> The *Introduction to the Principles of Morals and Legislation* (printed in 1780, but not published until 1789) made no great splash on either side of the water. Some years after its publication, one American Benthamite said that not four of his countrymen had read it.<sup>5</sup> The treatise was a systematic presentation of the doctrine of utility, and was concluded with a long footnote (and a footnote on the footnote!) in refutation of the American theory of natural rights as embodied in the Declaration of Independence and the Bills of Rights. “Who can help lamenting,” asked the author, “that so rational a cause should be rested upon reasons so much fitter to beget objections than to remove them?”<sup>6</sup>

The nature of these objections he expounded in detail in the *Anarchical Fallacies*, written in 1791 as a commentary on the Declaration of the Rights of Man, but not published in French until 1816

<sup>3</sup> The *Fragment* forms pp. 221–295 of Vol. 1 of J. Bowring (ed.), *Works of Jeremy Bentham* (11 vols., Edinburgh, 1838–1843).

<sup>4</sup> In *American Law Review*, Vol. 7 (1873), p. 579—reprinted in Harry C. Shriver (ed.), *Justice Oliver Wendell Holmes—His Book Notices, Uncollected Letters, and Papers* (New York, 1936), pp. 34–35. On the popularity of the *Commentaries*, see Julian S. Waterman, “Thomas Jefferson and Blackstone’s *Commentaries*,” *Illinois Law Review*, Vol. 27, pp. 629–659 (Feb., 1933). I owe this latter reference to Professor C. B. Robson, of the University of North Carolina.

<sup>5</sup> “Burr said he knew not four persons in America who had read the *Principles*,” Dumont to Bentham, September 4, 1811. *Works of Jeremy Bentham*, Vol. 10, p. 463.

<sup>6</sup> *Works*, Vol. 1, p. 154.

and in English until a quarter of a century later.<sup>7</sup> Talk about natural rights, he exclaimed, is bawling upon paper."<sup>8</sup> Such talk is at once illogical and mischievous: illogical, because all rights are the creatures of government; mischievous, because its object is "to add to those [selfish and dissocial] passions already but too strong—to burst the bonds that hold them in—to say to the selfish passions, there, everywhere is your prey!—to the angry passions, there, everywhere, is your enemy!"<sup>9</sup> "Natural rights," so the famous passage runs, "is simple nonsense; natural and imprescriptible rights, nonsense upon stilts . . ."<sup>10</sup> "From real laws, "Bentham adds, "come real rights; but from imaginary laws, laws of nature, fancied and invented by poets, rhetoricians, and dealers in moral and intellectual poisons, come imaginary rights, a bastard brood of monsters, 'gorgons and chimaeras dire.'"<sup>11</sup> Again, in the *Traité de législation* (1802), in Dumont's lucid French, he denounced natural rights as the creatures of natural law, as a "metaphor which derives its origin from another metaphor," and as "the most terrible destroyer of governments."<sup>12</sup> Dumont, who edited, translated, and published this treatise, sent a copy of it to his old schoolmate in Geneva, Albert Gallatin; and we know that it was read by several other Americans within a few years of its publication.<sup>13</sup> The bulk of it was not translated into English, however, until 1840—and then by an American, Richard Hildreth, whom we shall shortly discuss.

Up to this point, as we have seen, Bentham was a Tory; but after he became the leader of the philosophical radicals he persisted in his denunciation of natural rights. Thus in his *Plan of Parliamentary Reform* (1817), while accepting the conclusions, he attacked the premises of the Duke of Richmond's case for universal suffrage. "Some *ipse-dixitism* in it about rights might, in point of reasoning, though not perhaps in point of power of persuasion, have been spared."<sup>14</sup> Again, in a letter to Bowring, written in 1827, he referred to the Declaration of Independence as a "hodge-podge of confusion and absurdity";<sup>15</sup> and in the *Constitutional Code* (1830), he dismissed bills of rights as useful only as a check upon non-

<sup>7</sup> *Tactique des Assemblées législatives, suivie d'un traité des sophismes politiques* (ed. Dumont, 2 vols., Geneva, 1816); *Works*, Vol. 2, pp. 489–534.

<sup>8</sup> *Works*, Vol. 2, p. 497.      <sup>9</sup> *Ibid.*, p. 497.

<sup>10</sup> *Ibid.*, p. 501.      <sup>11</sup> *Ibid.*, p. 523.

<sup>12</sup> *Traité de législation* (2nd ed., 3 vols., Paris, 1820), Vol. 1, pp. 128 and 129.

<sup>13</sup> See discussion and references below.

<sup>14</sup> *Works*, Vol. 3, p. 446.      <sup>15</sup> *Ibid.*, Vol. 10, p. 63.

democratic governments, and rejected limitations on "legislative omniscience" as "in contradiction to the greatest happiness principle."<sup>16</sup> To this dreary catalogue, already too long, it must be added that Austin's *Province of Jurisprudence Determined* (1832), the dullest book Lord Melbourne ever read, made as little impression here as in England, and that his theory attracted little attention until the publication, posthumously, in 1863, of the *Lectures on Jurisprudence*. Finally, it is to be noted that many of Bentham's writings, including some of those mentioned above, did not appear in English until the publication, a decade after his death, of Bowring's edition of the *Works*. How extensively these formidable and carelessly edited tomes were purchased and read in the United States, I cannot say; but it may be worthy of note that I find no review of them in an American periodical until some twenty years after their publication—and that it was unfavorable in the extreme.<sup>17</sup>

From the foregoing it is fair to infer that such of Bentham's writings as were known in this country by about 1860 were not in themselves capable of arousing and sustaining widespread interest in utilitarian doctrine. There were, indeed, several obstacles in the way of its spread. One was an *odium theologicum*; there were rumors that Bentham was an atheist. Frequently accompanying this accusation was the charge that some of his disciples, notably Francis Place, were preaching infanticide.<sup>18</sup> The most serious obstacle, however, was Bentham's style. "We could have wished," wrote Thomas Cooper (an otherwise friendly critic) in a review of the *Rationale of Judicial Evidence*, "that the present editor [young John Stuart Mill] had translated the work out of the obscure, involuted Bentham dialect in which it is written. A book more disgustingly affected and so nearly unintelligible it is not possible to imagine, with the exception of some of Mr. Bentham's former works, which equally exhibit specimens of what may, by courtesy to Mr. Bentham, be called English, but on no other score."<sup>19</sup>

<sup>16</sup> *Ibid.*, Vol. 9, p. 119.

<sup>17</sup> "Jeremy Bentham and His Theory of Legislation," *National Quarterly Review*, Vol. 3, pp. 51-71 (June, 1861).

<sup>18</sup> See John Neal, *Principles of Legislation* . . . (Boston, 1830), p. iv (Bentham's theology) and p. 120 ff. (with particular reference to Francis Place's handbills on birth control); and Hugh Swinton Legaré, "Jeremy Bentham and the Utilitarians," *Southern Review*, Vol. 7, pp. 261-296 (Aug., 1831).

<sup>19</sup> *Southern Review*, Vol. 5, pp. 381-426 (May, 1830), at p. 381. Cf. C. W. Everett,

It is therefore clear that only authoritative and influential supporters, able expositors and translators, could propagate Benthamism in this country; and to account for the failure of the doctrine to deflect the course of American thought, I want to suggest, in the first place, that Bentham was as unfortunate in his American as he was fortunate in his English disciples. Halévy instances Bentham's chance meeting with Dumont at Bowood Castle in 1788 as "a typical case revealing the influence on history of little causes and individual accidents";<sup>20</sup> and one might similarly characterize the meeting with James Mill some two decades later. Such "causes and accidents," it may be repeated, were unfavorable to the diffusion of Benthamism in America. In evidence, let us call the roll of the American Benthamites. It will not take long.

The first of these was Aaron Burr. It is uncertain when Burr became and how long he remained a Benthamite, and it is doubtful whether he was ever a genuine believer. We do know that he owned the *Introduction*; and it is recorded that in 1793 he passed on his copy of it to Albert Gallatin with the remark "Here, this will please you—it is too dry for me!"<sup>21</sup> In 1808, Burr met Dumont in London, assured him that he had read the *Introduction* and the *Usury*, and added that "in spite of his recommendation they were little read in America, where anything requiring studious application is neglected. Nobody but Gallatin felt all their merit; and Gallatin was the best head in the United States."

On the strength of this, Dumont urged Bentham to meet the American, adding: "You may tell me his duel with Hamilton was a savage affair, but he has no desire to break your head."<sup>22</sup> Thus announced, Burr readily ingratiated himself with Bentham, and lived with (or sponged off) the old man for several months. "I am going to dine with Jeremy Bentham and Colonel Burr," wrote a contemporary, "and am very curious to see what sort of mixture will result from putting together pure philosophy and Yankee

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Introduction, *Anti-Senatica: An Attack on the United States Senate, sent by Jeremy Bentham to Andrew Jackson*, in *Smith College Studies in History*, Vol. 11, pp. 209–267 (July, 1926), at p. 220: "His [Bentham's] later works are generally consulted only by the determined scholar who will bear with the form for the matter. . . . Whether Bentham's direct pamphleteering had any effect on America, it is impossible to say without research, but the *Anti-Senatica* gives some indication as to why it probably did not."

<sup>20</sup> *Op. cit.*, p. 75.

<sup>21</sup> Neal, *op. cit.*, p. 111.

<sup>22</sup> *Works*, Vol. 10, p. 433.

treason."<sup>23</sup> One result was that for a time Bentham seriously entertained the idea of emigrating to Mexico, there to serve as lawgiver in the imperial domain of Emperor Aaron I.<sup>24</sup> Another was that Burr made at least one convert to Benthamism, his own daughter. To Theodosia he sent all of Bentham's published works and a bust of the philosopher,<sup>25</sup> and in acknowledgment of receipt of the bulky package, she wrote as follows: "I have read a small part of the *Traité de législation*. The work is highly original. It is truly calculated to make readers think profoundly, and gives a new direction to their reflections. Jeremy Bentham has opened a new and deeper vein of political and moral science, to bring from it the most brilliant diamonds. Such a mind as his is not produced in many centuries. I imagine he has reached the *ne plus ultra*, the border of the Styx, and no one can go further without becoming an inhabitant of the other world. . . . I should take as much pride in being his translator as the ancients did in declaring themselves oracles of their gods."<sup>26</sup>

Whether Burr's intellectual and glamorous daughter maintained such a worshipful attitude for the few remaining years of her life, I cannot say. Burr himself, while on his Continental travels, set down in his journal a critical comment relative to a French treatise on natural law: "Petty and ingenious nonsense . . . not naming Bentham," he wrote.<sup>27</sup> On his return to England in 1811, he took part in the Benthamite campaign to spread the Lancasterian system of education.<sup>28</sup> There is no evidence that on his return to his native land the following year he made any attempt to diffuse utilitarian doctrine, and it goes without saying that he was not of the stuff of which the Mills were made.

There were, however, other Benthamites. Mention has already been made of Gallatin, who also planned, but never executed, a

<sup>23</sup> F. Horner, *Memoirs and Correspondence*, Vol. 1, p. 464. (letter dated October 27, 1808), quoted in Élie Halévy, *La Formation du radicalisme philosophique* (3 vols., Paris, 1901-1904), Vol. 2, p. 364. The English translation of this work, previously cited, does not contain the extensive footnote references in which the passage quoted above will be found.

<sup>24</sup> *Works*, Vol. 10, p. 439.

<sup>25</sup> Samuel H. Wendell and Meade Minnegerode, *Aaron Burr* (2 vols., New York and London, 1925), Vol. 2, p. 240.

<sup>26</sup> Matthew L. Davis (ed.), *The Private Journal of Aaron Burr* (2 vols., New York, 1838), Vol. 1, p. 114.

<sup>27</sup> *Ibid.*, p. 231.

<sup>28</sup> Halévy, *La formation du radicalisme philosophique*, Vol. 2, p. 364.

translation of one of Dumont's redactions.<sup>29</sup> Edward Livingston, the Louisiana lawgiver, avowed himself a disciple, corresponded with the master, and in the introduction to the famous Louisiana penal code paid tribute to the principle of utility; but he seems to have been unaffected by Bentham's political doctrine and himself made no contribution to political theory.<sup>30</sup> Thomas Cooper became a utilitarian of a sort as early as 1812; and in 1826, in the *Elements of Political Economy*, he rejected both natural rights and natural law. "All rights are the creatures of society; founded on their real or supposed utility, and requiring the force of society to protect them. . . . There is no such thing as law of nature or law of nations existing."<sup>31</sup> In the review previously referred to, he praised the substance, even as he deplored the style, of the *Rationale*; and in his 1832 "Introductory Lecture to a Course of Law" he declared: "The polar star of morals and law is the greatest happiness of the greatest number."<sup>32</sup> But he did not live to develop the doctrine or found a school, and in any case his use of the greatest-happiness principle to vindicate slavery would have prevented him from exerting a truly national influence.

Our next Benthamite is one who, like Burr, was privileged to draw his inspiration from the lips of the master himself; one might call him a Down-East Yankee at the court of King Jeremy. In 1824, John Neal of Portland, Maine, went to England to make his fortune. He had already won some reputation as a novelist and, what is to the point here, had read some of Bentham's treatises.

<sup>29</sup> *Works of Jeremy Bentham*, Vol. 3, p. 468.

<sup>30</sup> For the brief reference to the utility principle, see *Complete Works of Edward Livingston on Criminal Jurisprudence* (2 vols., New York, 1873), Vol. 1, p. 189. On Livingston's indebtedness to Bentham, see Jesse S. Reeves, "Jeremy Bentham and American Jurisprudence," *Report . . . State Bar Association of Indiana* (1906), pp. 212-237; C. W. Everett, *op. cit.* (introduction to *Anti-Senatica*); Paul Brosman, "Edward Livingston and Spousal Testimony in Louisiana," *Tulane Law Review*, Vol. 11, pp. 243-265 (Feb., 1937); Mitchell Franklin, "Concerning the Historic Importance of Edward Livingston," *ibid.*, pp. 163-212; Roscoe Pound, *The Formative Era of American Law* (Boston, 1938), especially pp. 16, 167. The lectures constituting Dean Pound's book "were delivered at the law school of Tulane University on the occasion of the centennial of the death of Edward Livingston."

<sup>31</sup> *Elements of Political Economy* (Columbia, 1826), pp. 52-53. See B. F. Wright, Jr., *American Interpretations of Natural Law* (Cambridge, 1931), pp. 308-310; and Maurice Kelley, "Additional Chapters on Thomas Cooper," *University of Maine Studies*, 2nd series, No. 15 (Orono, 1930), pp. 5-100, especially p. 80.

<sup>32</sup> Quoted in Dumas Malone, *Public Life of Thomas Cooper* (New Haven, 1926), p. 370.



Indeed he had offered to translate one of the Dumont redactions; but the American publisher refused, "alleging that no one knew Mr. Bentham."<sup>33</sup> Living in London as a free-lance contributor to the English reviews, Neal attended one of the meetings of the Utilitarian Club, and in that way made Bentham's acquaintance. For a year and a half he resided at Queen's Square Place with the aged Bentham, and on his return to America announced himself as his spokesman. As such, he published in 1830 *The Principles of Legislation*, a translation of the first fourteen chapters of the *Traité*s. To it he prefixed a long introduction, containing a biography and a bibliography of Bentham, together with a statement of his own political theory. "I acknowledge," he proclaimed, "no rights that can interfere with the *greatest happiness of the greatest number*—none whatever—not even that of 'life, liberty, and the pursuit of happiness'—to borrow the awkward and either very unmeaning or very untrue phraseology of most of our constitutions. If it be better for the happiness of the greatest number that a man should die—*cut him down without mercy*. And so with his liberty, and so with his property."<sup>34</sup> That same year he wrote to inform Bentham that he had become a father and to promise that "my child, being born a utilitarian, shall, if I can so manage it, become the mother of nations in the faith."<sup>35</sup> His own faith did not long survive the failure of his book. The translation was awkward and inaccurate, and only four hundred copies of it were sold.<sup>36</sup>

Bentham was likewise unfortunate in his last American disciple and translator, Richard Hildreth. His translation of the *Traité*s was, unlike Neal's, a thorough and competent job;<sup>37</sup> and in the introduction he enthusiastically confessed the faith that was in him. "In the moral sciences, and especially in legislation," he wrote, "the principle of utility is the only certain guide; and in the estimation of an impartial posterity, Bentham will rank with Bacon, as

<sup>33</sup> John Neal, *Principles of Legislation: From the Ms. of Jeremy Bentham . . . by M. Dumont, Translated from the Second Corrected and Enlarged Edition; with Notes and a Biographical Notice*. (Boston, 1830), p. 43. On Neal, see Milton Ellis's account in the *Dictionary of American Biography* and Irving T. Richards, *Life and Works of John Neal* (unpublished thesis, Harvard University, 1932).

<sup>34</sup> *Op. cit.*, p. 120. The italics are in the original.

<sup>35</sup> Letter to Bentham, Mar. 11, 1830, in Richards, *op. cit.*, Appendix B.

<sup>36</sup> *Ibid.*, p. 744.

<sup>37</sup> *Theory of Legislation by Jeremy Bentham translated from the French of Étienne Dumont* (Boston, 1840).

an original genius of the first order."<sup>38</sup> But Hildreth's subsequent attempts to present an American version of Benthamism, *The Theory of Morals* (1844), in which he explicitly rejected natural rights, and the *Theory of Politics* (1853), in which he identified might with right, were little noticed at the time and have since been entirely forgotten.<sup>39</sup> "He seems to have had too little originality in ideas or style," Professor K. B. Murdock has written, "to win for himself a great place in history, and his reputation is likely to remain simply that of an active editor and writer whose competence in historical craftsmanship saved him from oblivion."<sup>40</sup>

Some reference should be made, finally, to E. L. Godkin, who, as editor of the *Nation* and as the author of several collections of political essays, exerted no little influence on American thought. "When I was at college (Queen's at Belfast)," he wrote, "I and the young men of my acquaintance were liberals in the English sense. John Stuart Mill was our prophet, and Grote and Bentham were our daily food. In fact . . . our professor of political economy and jurisprudence made Bentham his textbook."<sup>41</sup> In 1865 (having resided in this country nearly a decade), in a letter to Charles Eliot Norton, he argued in the Benthamite manner against the theory of natural rights as a justification of Negro suffrage; but he was soon to lose his utilitarian faith.<sup>42</sup> Some years later, in an essay on John Stuart Mill, he characterized Bentham as devoid of imagination and sympathy, and Mill as deficient in imagination and "animal spirits." Interestingly, too, he remarked that Bentham's influence in social theory, as distinguished from that in the realm of legal reform, was narrowed for want of an interpreter, "none of his followers having attempted to put his wisdom into readable shape, except Dumont, and he only partially, and in French."<sup>43</sup>

<sup>38</sup> *Op. cit.*, p. iii.

<sup>39</sup> *Theory of Morals* (Boston, 1844), pp. 183-184; *Theory of Politics* (New York, 1853), p. 20. With respect to the influence of Benthamism on Hildreth, see A. M. Schlesinger, Jr., "The Problem of Richard Hildreth," *New England Quarterly*, Vol. 13, pp. 223-245 (June, 1940); and on his place in American political thought, see Wright, *op. cit.*, p. 267.

<sup>40</sup> In article on Hildreth in *Dictionary of American Biography*.

<sup>41</sup> Rollo Ogden (ed.), *Life and Letters of Edwin Lawrence Godkin* (2 vols., New York, 1907), Vol. 1, p. 11. <sup>42</sup> *Ibid.*, pp. 45-49.

<sup>43</sup> *Reflections and Comments* (New York, 1895), pp. 70-71. A good discussion of Godkin's political theory and of its relation to Bentham and Mill will be found in Vernon L. Parrington's *Main Currents in American Thought*, Vol. 3 (New York, 1930), pp. 154-168.

So it appears that the American Benthamites were either epigoni or (as in the case of the last-named) apostates. It is also worthy of note that they worked alone. They founded no Utilitarian Club; they established no *Westminster Review*. Consequently, it is not surprising that they made but few conversions to the faith.

To survey this whole matter of Benthamism in America from another aspect, we might do well to pass in brief review the reactions to Benthamite theory on the part of more representative thinkers, moral and political—men who were in the main currents of American thought. To begin with a reference to Emerson: in 1831 he wrote in his journal: "The stinking philosophy of the utilitarian! *Nihil magnificum, nihil generosum sapit*, as Cicero said of that of Epicurus."<sup>44</sup> Two years later, however (a year after Bentham's death), he wrote to his brother from London: "I have been to see Dr. Bowring, who was very courteous. He carried me to Bentham's house and showed me with great veneration the garden walk, the sitting room, and the bed chamber of the philosopher. He also gave me a lock of his gray hair, and an autograph. . . . He is anxious that Bentham should be admired and loved in America."<sup>45</sup> Emerson contributed nothing to that end. He rejected utilitarianism with the same contempt as did his friend Carlyle, by whose views on this subject he was greatly influenced. In 1836, he wrote: "I had rather not understand in God's world than understand thro' and thro' in Bentham's."<sup>46</sup>

An equally scornful view of Benthamism is reflected in the writings of Hugh Swinton Legaré. "We do not know whether the publication of this book," he wrote in a long review of John Neal's *Principles*, "is to be considered as any proof of the growing popularity of Bentham and utilitarianism. But sure we are . . . that it will do nothing to increase that popularity."<sup>47</sup> After contrasting Bentham's principle of utility unfavorably with that of Paley, he concluded as follows: "But enough of utilitarianism—a philosophy

<sup>44</sup> Edward Waldo Emerson and Waldo Emerson Forbes (eds.), *Journals of Ralph Waldo Emerson* (10 vols., Boston and New York, 1909-1914), Vol. 2, p. 455.

<sup>45</sup> Ralph L. Rusk (ed.), *Letters of Ralph Waldo Emerson* (6 vols., New York, 1939), Vol. 1, p. 392. <sup>46</sup> *Ibid.*, Vol. 1, p. 450.

<sup>47</sup> *Writings of Hugh Swinton Legaré* (2 vols., Charleston, 1845), Vol. 2, p. 449. The essay first appeared in the *Southern Review* as cited above. On Legaré's importance in the development of American thought, see Parrington, *op. cit.*, Vol. 2, pp. 114-124.

the very reverse of that so justly, as well as beautifully, described in Milton's *Comus*:

'How charming is divine philosophy

Not harsh and crabbed as dull fools suppose. . . .'<sup>48</sup>

During the course of his pilgrim's progress, Orestes A. Brownson took up many of the popular doctrines of his time, but he consistently ridiculed Benthamism. In particular, he repudiated the democracy of "the greatest good of the greatest number, as taught by that grave and elaborate humbug, Jeremy Bentham."<sup>49</sup> "Hildreth," he wrote in a review of the *Theory of Morals*, "has studied Benthamism until his own head is more confused, if possible, than ever was Bentham's own head."<sup>50</sup>

Likewise, if one surveys the controversial writings and the systematic political treatises of the first six or seven decades of the nineteenth century, one finds that the leaders of thought were untouched by or were unfriendly to Benthamism. John Adams, Jefferson, John Taylor, Madison, Calhoun—none of these seems to have known Bentham's contributions to political theory.<sup>51</sup> Nathaniel Chipman's *Principles of Government* (1833) shows some utilitarian influence, but it is the utilitarianism, not of Bentham, but of Paley.<sup>52</sup> Lieber makes one reference to Bentham in the *Political Ethics*, and relegates him to a footnote in the *Civil Liberty*.<sup>53</sup> Woolsey curtly rejects the greatest happiness principle, and dismisses the Austinian concept of rights as "a gloomy system."<sup>54</sup>

<sup>48</sup> *Ibid.*, p. 481.

<sup>49</sup> Brownson's *Works* (20 vols., Detroit, 1882-1887), Vol. 20, p. 354. The best biography is Arthur M. Schlesinger, Jr., *Orestes A. Brownson: A Pilgrim's Progress* (Boston, 1939).

<sup>50</sup> *Ibid.*, Vol. 14, p. 237.

<sup>51</sup> "Neither his readings in theology nor his later acquaintance with the critical work of Bentham seems to have shaken his confidence [in Locke's theory of natural rights]." Abbot E. Smith, *James Madison, Builder* (New York, 1937), p. 95. For the Bentham-Madison correspondence growing out of Bentham's offer to codify American law, see *Works of Jeremy Bentham*, Vol. 4, pp. 453-507; G. Hunt (ed.), *Writings of James Madison* (New York, 1900-1910), Vol. 8, p. 400; and Charles Francis Adams (ed.), *Memoirs of John Quincy Adams* (12 vols., Philadelphia, 1874-1877), Vol. 3, pp. 511-512. On Jefferson's lack of familiarity with Bentham's writings, see Julian S. Waterman, *loc. cit.*, p. 648.

<sup>52</sup> *Principles of Government: A Treatise on Free Institutions* (Burlington, 1833), especially pp. 85 and 96.

<sup>53</sup> *Political Ethics* (2 vols., Boston, 1838), Vol. 1, p. 356; *On Civil Liberty and Self-Government* (enlarged ed., Philadelphia, 1859), p. 195.

<sup>54</sup> T. D. Woolsey, *Political Science* (2nd ed., New York, 1889), pp. 1-2 (happiness principle) and p. 130 (Austinianism).

In the last two or three decades of the century, to be sure, there emerged what Professor Dicey would call a Benthamite cross-current in American juristic and political thought. Oliver Wendell Holmes, Jr., was one of the first to subject Austinianism to critical analysis; and although he did not follow the doctrine of sovereignty all the way, he did accept, and he continued to adhere to, the Austinian concept of rights and of natural law.<sup>55</sup> A. Lawrence Lowell, writing in 1897, on "The Limits of Sovereignty," declared that "it is due to Austin, more than any one else, with the possible exception of Bentham, that the idea [of natural rights] has fallen into discredit, and has been abandoned by almost every scholar in England and America."<sup>56</sup> This was no doubt an exaggeration, even in respect of the prevalence of Austinianism among scholars; certainly it is not true that the main current of political thought was Benthamite or Austinian. In this connection, the analysis of W. W. Willoughby is of interest. In his *Nature of the State* (1896), he substituted utility for natural rights "as the positive basis upon which the state rests."<sup>57</sup> He went on to say, however, very cogently as it seems to me, that "resting, as we do, our origin upon a forcible separation from England, and founding the justification for our acts upon so-called natural or unalienable rights of liberty, we have not been disposed to see in legal authority the sole source of legal rights, nor to concede to its sovereignty such a legally despotic character as logically follows from the Austinian view."<sup>58</sup>

The passage just quoted suggests another and no doubt a more basic reason for the failure of Benthamism to become a main current in American thought. Halévy has acutely observed that Bentham's influence outside his own land was greatest in such countries or areas as Russia, Spain, and Spanish America, and that it was least in nations which like France and Germany had a "philosophic tradition."<sup>59</sup> Extending this generalization to include the United

<sup>55</sup> Cf. note 4 above; and see "Codes and the Arrangement of Law," *American Law Review*, Vol. 5, p. 1 (1870), reprinted in *Harvard Law Review*, Vol. 44, pp. 725-737 (Mar., 1931); "Natural Law," in *Collected Legal Papers* (London, 1920), especially pp. 313-314; and cf. the statement by Judge Learned Hand: "Nor again do I suppose that I am asked to discuss . . . his [Holmes's] understanding of law, so strictly Austinian . . ." F. Frankfurter (ed.), *Mr. Justice Holmes* (New York, 1931), p. 127—quoted in Mark DeWolfe Howe (ed.), *Holmes-Pollock Letters* (2 vols., Cambridge, 1941), Vol. 2, p. 263, n. 2.

<sup>56</sup> *Essays on Government* (Boston, 1897), p. 193.

<sup>57</sup> *Op. cit.* (New York, 1896), p. 113.      <sup>58</sup> *Ibid.*, p. 166.

<sup>59</sup> *Growth of Philosophical Radicalism*, p. 296.

States, one might reasonably suppose that even if Bentham had been more fortunate in his American interpreters, his doctrine would have encountered an immovable obstacle in our deep-seated Lockean tradition. A more detailed and (I hope) more convincing analysis would run somewhat as follows: In respect of the future of Benthamism, the decisive period in both countries was that between the French Revolution and (say) 1815. In England, to abridge a long story, the reaction to the French Revolution was so strong and so enduring that no doctrine at all tainted with Jacobinism could win widespread acceptance. By 1815, however, there was a demand, as Professor Carl Becker has put it, for "a distinctively British road to democracy"; and Bentham pointed the way.<sup>60</sup> "The teacher who could lead England in the path of reform must not talk of the social contract, of natural rights, or rights of man, or of liberty, fraternity, and equality. Bentham and his disciples precisely satisfied this requirement." Thus Professor Dicey.<sup>61</sup>

In the United States, on the other hand, the reaction to the French Revolution was not so extreme.<sup>62</sup> There were, to be sure, bitter attacks on Paine and the Jacobins; but only one "tie-wig" Federalist, Fisher Ames, repudiated the natural law concept.<sup>63</sup> The case of John Quincy Adams is particularly interesting. In his *Letters of Publicola* (1791), he attacked Paine and the French Revolution without himself abandoning the natural rights heritage of our own Revolution. Years later, as American minister in London, he became an intimate friend of Bentham and accompanied the aged philosopher on the famous "antejantacular and post-prandial circumgyrations."<sup>64</sup> To the end, however, he retained his faith in the philosophy of natural rights. "The theory of the rights of man," he wrote in 1835, "has taken deep root in the soil of civil society. It has allied itself with the feelings of humanity and the precepts of Christian benevolence. . . . It has linked itself with religious doctrines and religious fervor."<sup>65</sup>

<sup>60</sup> *Declaration of Independence* (New York, 1922), p. 296.

<sup>61</sup> *Lectures on the Relation between Law and Public Opinion in England* (2nd. ed., London, 1914), p. 171.

<sup>62</sup> See C. D. Hazen, *Contemporary American Opinion of the French Revolution* (Baltimore, 1897).

<sup>63</sup> Wright, *op. cit.*, p. 138.

<sup>64</sup> C. F. Adams (ed.), *Memoirs of John Quincy Adams* (10 vols., Philadelphia, 1874-1877), Vol. 3, pp. 511-512, 537-555, 560-565. See also the letter from Bentham to Adams, *Works of Jeremy Bentham*, Vol. 10, pp. 554-555.

<sup>65</sup> *Memoirs*, Vol. 9, p. 251; quoted, Wright, *op. cit.*, p. 211. Illuminating discussion of the religious basis of the natural rights doctrine as a reason for its per-

In this country, then, although the natural rights concept has not been a continuously vital and active element in our political thought, it has always been a viable one. Indeed, one can go further and say that here it was utilitarianism which became discredited by the use to which it was put in the great political debates of the nineteenth century. Thus in the state convention debates of the twenties and thirties, some opponents of the extension of the franchise opposed the democratic natural rights argument with a case grounded on utilitarian principles. P. P. Barbour, for example, in the Virginia convention (1829-1830) argued in this fashion: "Is it not a solecism to say that rights, which have their very being as a consequence of government, are to be controlled by principles applying solely to a state of things when there was not government?"<sup>66</sup> "In politics, as in morals," he went on to say, "the best test of propriety is practical utility."<sup>67</sup> Also in the slavery controversy, anti-slavery arguments premised on natural rights were sometimes countered by appeals to the principle of utility. Cooper's utilitarian defense of slavery has been mentioned. To take another example, James Henry Hammond, repudiating natural law, based slavery "on the revealed Will of God—on custom—on utility—on the happiness of the greatest number. . . ."<sup>68</sup> Thus, by a curious twist in the course of thought, a doctrine which in England was on the side of the future was here discredited by its association with the forces of reaction.

A third reason for the failure of Benthamism to make a strong impact on American political thought deserves brief notice. I have previously had occasion to point out that in his second or radical phase Bentham became an admirer of the American constitutional system, and I may add that his admiration was genuine and uncritical. In his *Leading Principles of a Constitutional Code* (1823), for example, he wrote: "This [the United States] Constitution has for its general end the greatest happiness of the greatest number."<sup>69</sup> England, he argued in the *Constitutional Code* (1830), has no con-

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durance in American thought will be found in Alice M. Baldwin's *New England Clergy and the American Revolution* (Durham, 1928).

<sup>66</sup> *Virginia Convention: Proceedings and Debates* (Richmond, 1830), p. 91.

<sup>67</sup> *Ibid.*, p. 94.

<sup>68</sup> Quoted, William Sumner Jenkins, *Pro-Slavery Thought in the Old South* (Chapel Hill, 1935), p. 44.

<sup>69</sup> *Works*, Vol. 2, p. 269. A little further on (p. 274), he qualifies his praise: "slave-purchasing and pertinaciously slave-holding states always excepted."

stitution. "The Anglo-American United States" has a constitution. "It has for object the greatest happiness of the greatest number."<sup>70</sup> He wrote to President Andrew Jackson in 1830 that he was at heart more of a United States man than an Englishman."<sup>71</sup> The point is, of course, as Professor A. M. Schlesinger has observed, that "many of the ideals of political democracy for which Bentham strove were already incorporated in the form of statutes and constitutions in the United States," and hence "it is not surprising that his doctrines were chiefly influential in America in the field of juristic science."<sup>72</sup> The point is, too, that in the context of such statements as those just quoted, his criticism of our natural rights philosophy and of our bills of rights might easily pass unnoticed.

In conclusion, one might, indeed, inquire whether Bentham's greatest-happiness or utility principle was essentially antithetical to the natural rights concept. To most nineteenth-century thinkers it seemed to be; but in perspective, as Ritchie was one of the first to point out, it appears to be merely a variant of it. When Bentham said (he seems never to have written), "Each to count for one and no one for more than one," he unwittingly accepted the basic assumption of the doctrine which he had so unremittingly attacked.<sup>73</sup>

This is not to say, however, that the failure of Benthamite doctrine to become a main current in American thought is altogether without significance. Dicey and more recently G. D. H. Cole have shown quite convincingly that although Bentham's was originally and, in a sense, accidentally an individualist doctrine, its essence, its inner logic, was collectivist. The greatest-happiness principle (following Dicey) was "big with revolution"; its implication was that legislation should respond to the interests of the wage-earning

<sup>70</sup> *Ibid.*, Vol. 9, p. 9.

<sup>71</sup> John Spencer Bassett (ed.), *Correspondence of Andrew Jackson* (5 vols., Washington, 1926-1931), Vol. 4, p. 46. I am unable to agree with Mr. C. W. Everett's statement (*op. cit.*, pp. 209-218) that Jackson's first message to Congress reflects Bentham's influence in phrasing or in substance. Everett suggests that Bentham's disciple and Jackson's secretary of state, Edward Livingston, may have written the message; but there is in any case no evidence of which I am aware that Livingston was acquainted with Bentham's political, as distinguished from his juristic, theory.

<sup>72</sup> Introduction (p. 5) to Hilda G. Lundeen, *The Influence of Jeremy Bentham on English Democratic Development* (University of Iowa Studies, Vol. 8, No. 3, no date).

<sup>73</sup> David G. Ritchie, *Natural Rights* (3d. ed., London, 1916), p. 249. See also Leslie Stephen, *op. cit.*, Vol. 1, pp. 303-310, for a penetrating comparative analysis of Benthamite and natural-rights individualism.



class, which in an industrial society constitutes the "greatest number." Furthermore, the utilitarian theory of sovereignty provided, in parliamentary supremacy, the instrument wherewith such legislation might be shaped. Finally, in its effective demand for a more efficient, more highly centralized, public administration, Benthamism laid the foundation of the modern service state.<sup>74</sup> To end on a speculative note, I think it at least arguable that widespread acceptance of the Benthamite brand of individualism in America might well have facilitated here, as in England, rapid transition to a collectivist democracy.

<sup>74</sup> Dicey, *op. cit.*, pp. 303-310. Cf. G. D. H. Cole, *Some Relations between Political and Economic Theory* (London, 1934), pp. 45-46.

## INDIVIDUAL CLAIMS TO SOCIAL BENEFITS, II\*

JANE PERRY CLARK

*Barnard College*

### V. OFFICIALS WHO CONDUCT HEARINGS

Since officers who conduct hearings in benefit procedures are given so much latitude and are so free from any leading-strings of a court process, it is of the essence not only that they possess a judicial attitude of mind but that they be keenly alive to the social implications of their work. In 1929, the New York Industrial Survey Commission wrote: "Referees are in every essential judicial officers; and they should be, so far as is humanly possible, above suspicion of improper practices, political or otherwise. They should be persons of mature judgment and be skilled in law—not alone the Compensation law—for they touch many and various points of law not comprehended within the language of the Compensation law. They should be trained in the value of evidence, and they should know the rules of evidence even though they are not obliged to apply them in compensation hearings."<sup>70</sup>

It is safe to speculate that if the above had been written in 1941, it would have contained more emphasis on the social viewpoint needed by referees. They must realize that on them depends to a large extent the difficulties accompanying denial of benefits which not only may cause serious hardship to individuals but may even have repercussions of the utmost importance in the community at large. Thus referees conducting hearings are supposed to have a kind of partisanship toward the law, in that they must constantly remember that its aim is to secure payments to all qualified claimants, not merely to decide the merits of a dispute between two opposing parties. Nevertheless, an attitude which is supposed to resolve doubts in favor of a claimant as required by the compensation law does not negate a judicial frame of mind in deciding the merits of a disputed claim.

The best defense against unfairness and discrimination is found here, as in all administration, in the appointment of qualified personnel. The referees who conduct the hearings in workmen's compensation in New York are appointed by the industrial commis-

\* The first instalment of this article appeared in the August issue.

<sup>70</sup> *Report of the Industrial Survey Commission*, Mar. 9, 1929, p. 58. Cf. *Hearings under the New York Workmen's Compensation Law*, pp. 20-24, for discussion of qualifications of referees.

sioner of the state, and so are not responsible for position or tenure to the industrial board which may later review their decisions.<sup>71</sup> No qualifications are established by law, save for a limited number of referees who are appointed under civil service. It has been suggested that the appointing power be lodged with the judiciary,<sup>72</sup> but the present trend is away from such proposals, which over-emphasize the legal nature of compensation work to the detriment of specialized knowledge, and would in no way lessen political pressures on the appointing authority. In unemployment compensation, New York has followed rather different lines, for the referees who hold the hearings for the determination of disputed claims in that type of compensation are likewise subject to appointment by the industrial commissioner, but are responsible to the unemployment insurance appeal board<sup>73</sup> for the conduct of hearings.<sup>74</sup> Their authority thus appears to be divided so that they are neither entirely part of the administrative organization of the state department of labor nor entirely part of an independent quasi-judicial organization. In view of the judicial nature of their duties, the latter would appear to be the more logical position for them to occupy in the state government.

Wisconsin followed an altogether different procedure in its first review of claims for unemployment compensation. There, appeals from the determination of the adjustments section may be made by either employer or employee within seven days from the date on which notice of the award was mailed to them. Appeals are heard in the first instance by appeal tribunals to which matters are referred by an appeals section in the central office of the unemployment compensation department of the industrial commission of the state. Appeal tribunals consist of from one to three full-time salaried members or of one full-time salaried examiner who serves as chairman and two others, representing respectively employers and employees, appointed by the commission, and paid on a *per diem* basis.<sup>75</sup> In practice, an appeal tribunal consists of a senior examiner assigned from the central office and employer and employee representatives selected by the commission from lists submitted for the

<sup>71</sup> The Industrial Board of five members is appointed by the governor to serve for overlapping terms of six years each. <sup>72</sup> Cf. *Hearings, op. cit.*, pp. 22-24.

<sup>73</sup> The Unemployment Insurance Appeal Board is an independent body of three members appointed by the governor for overlapping terms of six years each. *Consolidated Laws of New York*, Ch. 31, Sec. 518.6.

<sup>74</sup> *Ibid.*, Sec. 533.1.

<sup>75</sup> *Laws of Wisconsin*, Ch. 108, Sec. 108.09(4).

particular group by the Wisconsin Manufacturers' Association and the Wisconsin Federation of Labor.<sup>76</sup> No person may serve in any case in which he is directly interested.<sup>77</sup> If one lay member does not appear at the hearing, it may be held with the consent of the parties, the lay member who is present participating but not voting.

After the receipt of an appeal request at the central office, the head of the appeals section schedules the time and place for a hearing. The senior examiner, as chairman of the appeal tribunal, directs the proceedings at the hearing and questions the parties and witnesses, although of course the other members may ask questions too. Each case is allowed an hour and a half and is treated informally, the parties usually not being represented by attorneys.<sup>78</sup> After the hearing, the case is discussed and the employer and employee members state their views. If they disagree, the examiner's vote decides the case, though occasionally decision is postponed for further discussion with other examiners. All cases are completely reported, but the notes are not transcribed unless needed for further appeal.

The advantages of the appeal tribunal plan appear to be: (1) It brings the viewpoints and experiences of employers and employees into a case. (2) It is valuable to have both of these groups represented whenever there is a contentious labor problem involved in the decision, such as the right to receive unemployment compensation by a person on strike. (3) In some cases, one of the members of the tribunal may have had personal experience in the industry concerned, which aids in bringing out relevant testimony and reaching a decision.

The objections to the plan, on the other hand, are the following: (1) The cost is high. As the compensation of the three members is at the rate of \$10 per day plus expenses, the cost is usually about \$50 per day. As the hearing is always held in the county where the employer's industrial establishment is located, all members hearing a case must be taken there, even if only one case is involved. (2) The lay members are frequently ignorant of the law, unless the same member serves frequently. (3) These same lay members are often not familiar with the procedure of hearing nor with weighing evidence.<sup>79</sup>

Partly to overcome these objections, the Wisconsin law was amended in June, 1937, to provide that, at the discretion of the in-

<sup>76</sup> Matschek, *op. cit.*, p. 50 ff.

<sup>77</sup> Cf. note 75, *supra*.

<sup>78</sup> Matschek, *op. cit.*, p. 50.

<sup>79</sup> Matschek, *op. cit.*, p. 51.

dustrial commission, an appeal tribunal may consist of only a senior examiner acting for the board.<sup>80</sup>

If the main objective to be attained is fairness to individual claimants, hearings are best held by persons appointed specifically for the purpose, such as referees in workmen's compensation. If the hearings are intended, as in some old age assistance procedures, to be an integral part of the total supervisory effort of the state, arrangements for hearings must include participation by workers responsible for relations with the local administrative organizations. In Wisconsin, an interesting plan is followed, in that two state staff members who have no other responsibilities conduct the hearings in various parts of the state. These officials submit a summary report of each hearing, documented by a statement of the legal aspects of the case and by a complete stenographic record of the proceedings.<sup>81</sup> The state board is thus furnished with all the facts and opinions.

#### VI. REPRESENTATION OF CLAIMANTS

One of the advantages of the informality of administrative procedure in applications for social benefits has been the fact that claimants may be represented by persons of their choice and of specialized knowledge rather than merely by attorneys versed in the intricacies of legal procedure. Indeed, the present workmen's compensation procedure in New York State is in part the result of the misuse of the old employers' liability system by the practices of certain unscrupulous lawyers. Contingent fees, excessive charges, delays due to clogged court calendars, and the legalistic tone manifested by the technical rules of evidence, preponderance of evidence, statutory defenses, and all the armamentarium of the skilled lawyer<sup>82</sup> were among the reasons why the need for speedy, informal, and technical procedure in securing compensation for injured workers became so apparent in New York that the workmen's compensation law was enacted in the first instance.

Early abuses of the system of lay representation led to the adoption of licensing provisions. So-called "runners," persons not attorneys, represented themselves to injured workmen as able to secure benefit in the payment of compensation, and frequently exacted money improperly from the workmen. So safeguards were adopted and now form part of the law and regulations. Any one not a lawyer

<sup>80</sup> *Wisconsin Laws*, Ch. 108, Sec. 108.09(4).

<sup>81</sup> Lansdale, etc., *op. cit.*, p. 312.

<sup>82</sup> Quoted from letter from Mr. Henry Sayer, *op. cit.* Cf. note 59 *supra*.

desirous of representing claimants before the referees or industrial board of New York must secure a license from the board.<sup>83</sup> Such licenses are issued only after presentation of credentials, examination, and personal appearance before a committee of the board, and are given to two groups of people only—first, those licensed without charge, who include trade union or welfare representatives retained on a salary basis by a union or other organization, or occasionally paid on a fee basis by an injured workman; second, those who desire to practice as individuals on payment of a license fee of fifty dollars per year.<sup>84</sup> Of course, attorneys may also represent claimants, and do not need licenses, but the financial rewards for representation in compensation cases are apt to be so small that busy lawyers are little likely to be attracted to this type of case.

In an effort to safeguard workers, representatives of all kinds practicing before the referees or industrial board of the state of New York are limited in the amount of fee to be charged. Unless service is rendered without charge to the worker, a "nominal fee" is fixed at the hearing. If "substantial assistance" has been rendered, a fee is fixed "commensurate with the service, having due regard for the financial status of the claimant."<sup>85</sup> The experience of members of the bar regarding fees for services has been so unpleasant that, except in the most unusual cases, they are reluctant to appear.<sup>86</sup>

In a similar way, laymen as well as attorneys may represent claimants under the New York Unemployment Compensation Law, but only lawyers may charge for their services.<sup>87</sup> The local employment offices advise claimants by means of large signs telling them of their rights to a hearing and stating: "You do *not* need a lawyer." In such cases, union agents often represent the claimant, and these agents are often "more skillful and helpful" than attorneys<sup>88</sup> because of specialized knowledge of unemployment problems.

<sup>83</sup> *Consolidated Laws of New York*, Ch. 75, Art. II, Secs. 24a, 50; Workmen's Compensation Law Rules and Regulations, Rules 20-21. <sup>84</sup> *Ibid.*

<sup>85</sup> Rule 17. In the case of attorneys, the "nominal fee" provision is omitted, and the fee is arranged only on a basis commensurate with the service and with regard to the financial status of the claimant. Some lawyers have tried to impose on compensation cases the old liability system of contingent fees. Cf. *Matter of Fisch*, 188 App. Div. 525.

<sup>86</sup> *Hearings*, *op. cit.*, p. 26. Cf. pp. 26-27 for discussion of fees in general.

<sup>87</sup> *Consolidated Laws of New York*, Ch. 31, Sec. 511.2. Cf. also Cloe, *op. cit.*, p. 1163, note 56, where it is stated that referees and the Appeal Board seldom inquire as to the fee arrangement with an appearing attorney, but claim reviewers do and when requested usually allow \$5.00. Cf. *Claim Reviewer*, no. 4399c.

<sup>88</sup> Cloe, *op. cit.*, p. 1163.

The profession of the law is coming gradually to realize that the rewards of such practice are insufficient to attract its members, as indicated by a statement of the standing Committee on Unauthorized Practice of the Law of the American Bar Association made in November, 1939, to the effect that there are many technical fields of expert knowledge wherein those appearing have the right to present the facts, and that such appearance does not necessarily require knowledge of law.<sup>89</sup> Nevertheless, there still exists a certain *malaise* in the legal profession in regard to the idea of representation by laymen of claimants before governmental agencies, as shown by the appointment of a special committee of the New York State Bar Association in the fall of 1939 to study the subject.<sup>90</sup>

#### VII. APPEALS

An administrative procedure formulated to safeguard individual rights to benefit is based on the idea of administrative review of both law and facts by an impartial body whose action is not controlled by the original decision. In fact, an appeal of this nature not only protects the rights of clients but also hastens the prompt disposition of cases and relieves the courts of a duty which may be more satisfactorily performed by a body devoting its primary attention to the subject-matter of the statutory benefit.<sup>91</sup>

Despite the need for such appeal, considerable confusion has arisen as to its scope and its basis, particularly in the newer public assistance procedures. According to Webster's *New International Dictionary*, an appeal is "a proceeding to which a cause is brought from an inferior to a superior court for re-examination or review and reversal, retrial or modification." Yet in some public assistance procedures no appeal in this sense is possible and appeal has come to be used interchangeably with "fair hearing." In some states, a state agency makes all decisions on individual public assistance grants, and therefore there is no superior administrative authority to review the action.<sup>92</sup> In those states, a dissatisfied claimant for benefits must present his case to the officials, who bear the

<sup>89</sup> New York State Bar Association, Lawyer Service Letter No. 39, Nov. 29, 1939, p. 156. The committee suggested that any unauthorized practice is capable of elimination where, upon knowledge of the facts and a presentation of public injury, the rules of practice and procedure of the agency in question be suitably amended and enforced.

<sup>90</sup> *New York Times*, Sept. 27, 1939.

<sup>91</sup> W. F. Dodd, *Administration of Workmen's Compensation* (1936), p. 785.

<sup>92</sup> For discussion of old age assistance, cf. Lansdale, etc., *op. cit.*, Chap. 14, *passim*.

final administrative responsibility for the decision which aggrieves him. The only recourse in such a situation is the courts, as is provided in the laws of Connecticut and Iowa.<sup>93</sup>

In workmen's compensation and unemployment insurance, a real machinery for administrative appeal has been established. In those fields, it has already become apparent that the day is come when "supremacy of law" means the safeguards offered by administrative as well as judicial appeal. Although in New York State in 1938, referees to whom disputed claims for workmen's compensation were presented made final decisions in ninety-three per cent of all claims, and only seven per cent of the referees' decisions were appealed,<sup>94</sup> nevertheless the existence of the possibility of appeal constitutes an important safeguard for individual claimants. In the same year, referees had disallowed claims in forty-nine per cent of the cases and made awards in fifty-one per cent;<sup>95</sup> so other appeals might have been taken had claimants not been satisfied.

Application for review of the case is made in writing<sup>96</sup> to the industrial board. The granting or denying of an application for review is discretionary with the board, which may require argument on application before making a decision. It may at any time review any decision, and may increase, diminish, or end awards, subject to maxima and minima stated in the law, if applied to by any interested party on the ground of any change in conditions or proof of erroneous award.<sup>97</sup> If no application is made for review, the board may act of its own motion, as will be seen later.<sup>98</sup>

The law contemplated that appeals were to be heard by the full board, but the burden of work has grown so great that each member of the board has a separate calendar and hears appeals alone. His decision, however, constitutes the decision of the board,<sup>99</sup> unless he himself considers a question of fact or law to be of sufficient difficulty to warrant decision by the whole board, which then

<sup>93</sup> P. L. 1937, Title XIV, Ch. 99a, Sec. 397d (Conn.); 48 G. A. Iowa (1939, Ch. 140, Sec. 26.

<sup>94</sup> *Report of the Industrial Commissioner, op. cit.*, p. 73.

<sup>95</sup> *Ibid.*, p. 72.

<sup>96</sup> Industrial Board Rules, Rule 13; within twenty days after filing of the referee's decision.

<sup>97</sup> *Consolidated Laws of New York*, Ch. 67, Art. II, Sec. 22. Change in conditions must be in the form of a verified medical report prepared as the result of an examination held after the expiration of a substantial period from the closing of the case, or an affidavit, if an examination cannot be held which would indicate the material change in the degree of disability which has taken place subsequent to the closing of the case. *Industrial Board Rules*, Rule 14.

<sup>98</sup> *Ibid.*, p. 40.

<sup>99</sup> *Consolidated Laws of New York*, Ch. 67, Art. II, Sec. 27.



decides by majority vote. A person aggrieved by a decision of an individual board member may write to ask for review by the entire board, but this is granted at the discretion of the board member who originally reviewed the appeal. The freedom of action given the board is seen by the fact that on all applications for review, "the board may affirm, reverse, or modify any decision or award of a referee as the law and facts may require or may remand the case as the board may direct, or continue for further consideration by the board," as may be in the interest of justice.<sup>100</sup>

A similar board hears appeals under the New York unemployment insurance law. Within twenty days after a hearing at which an award has been made, any party who appeared at the hearing may take an appeal<sup>101</sup> to an unemployment insurance appeal board. Like the industrial board, this board is not responsible to the head of the state department of labor but occupies an independent status within the department. During the first six months of its existence, it was possible to have the full board participate in every case coming before it, but thereafter the increasing load of work made it necessary for the members to act individually.<sup>102</sup> Since then, the members of the board are assigned appeals in rotation<sup>103</sup> unless the cases involve the determination of policies or new problems of law which necessitate action of the entire board.

Because of the particular plan for hearings in Wisconsin, the law of that state allows final administrative appeal to be taken to the industrial commission of the state (the three-member commission in charge of labor law administration) within ten days after a decision is mailed to either party to the case. Within ten days, the commission may affirm, reverse, change, or set aside the decision, on the basis of evidence previously submitted, or may direct the taking of additional testimony.<sup>104</sup> The failure of the commission to act within the time specified constitutes an affirmance of the appeal tribunal decision.

Usually the same rules govern the fair hearing procedure in appeals as in the original hearing. Neither the industrial board nor the unemployment insurance appeal board in New York is bound

<sup>100</sup> *Industrial Board Rules*, Rule 13.

<sup>101</sup> *Consolidated Laws of New York*, Ch. 31, Sec. 531.

<sup>102</sup> *Annual Report of the Industrial Commissioner*, *op. cit.*, 1938, p. 156.

<sup>103</sup> *Consolidated Laws of New York*, Ch. 31, Sec. 518.6.

<sup>104</sup> Wisconsin Unemployment Compensation Act, Ch. 108, *Wisconsin Laws*, Sec. 108.09(6).

by common-law or statutory rules of evidence, or by technical or formal rules of procedure, but the hearings are conducted in such a manner as to ascertain the substantial rights of the parties.<sup>105</sup> Although the boards are not required to hold a hearing on every appeal, they exercise their discretion broadly in favor of appellants before it. Notice is given to every interested party when appeals are re-taken, and all parties are notified that they may submit a brief or a written statement, or request a hearing, for the purpose of oral argument or to introduce new evidence. If the record is incomplete, the unemployment insurance appeal board, on its own motion, may set down the case for hearing.

There are two important variations in types of appeal procedure. In one, the authority to which appeal is taken reviews both facts and evidence or only the facts, and may possibly take additional evidence; in the other, the case is remanded for rehearing to the officer who originally heard it.

In the first type of appeal, the important question is how far the facts should be given administrative review. Judicial review is increasingly limited in scope in all situations save where, as in the administration of the Federal Longshoreman's and Harbor Worker's Act,<sup>106</sup> it is geographically impossible to provide for administrative review. Therefore administrative review of the facts by an impartial body which at no previous stage of the proceedings has passed on them constitutes an additional safeguard for individual rights<sup>107</sup> whenever such review is possible. On the other hand, two hearings may simply add delay and expense to the proceedings and encourage dispute, and may tend to destroy the importance of the first hearing to such an extent that relevant information may not be presented until the second proceeding.<sup>108</sup>

The presentation of additional evidence on appeal constitutes another difficult problem. In workmen's compensation in New York, the evidence and testimony in the record alone are considered in the appeal of the case, whereas in unemployment insurance in the same state, the appeal board is empowered not only to review the facts but to hear additional evidence. The "board has definitely committed itself to factual review and does not hesitate to overrule a previous determination if in its opinion different find-

<sup>105</sup> *Consolidated Laws of New York*, Ch. 67, Sec. 118, and Ch. 50, Secs. 533.2 and 523.1(c).

<sup>106</sup> Public No. 803, 69th Cong., 44 Stat. 1424, as amended June 25, 1938.

<sup>107</sup> Dodd, *op. cit.*, p. 785. <sup>108</sup> Cf. Cloe, *op. cit.*, p. 1178.

ings would have been more reasonable under the circumstances. . . . Although the appeal board has said that 'new evidence' may not be presented on appeal, 'additional evidence' is heard in about one-fourth of the appeals. . . ."<sup>109</sup>

If adequate opportunity is provided for full administrative review of both law and facts, and if an impartial body within the general administrative structure may hear evidence in addition to that presented at the original hearing, individuals receive greater assurance of complete consideration of their claims than otherwise. The path is thus opened for development of administrative review of such a scope that the traditional belief in law courts as the only adequate guardians of liberty may well be modified.

During the year 1938, 11,566 applications for review of workmen's compensation decisions were filed with the industrial board of New York, and of these, claimants submitted fifty-seven per cent of the total and insurance carriers the balance. Of the applications for review, fifty-three per cent of those submitted by claimants and sixty-three per cent of those submitted by insurance carriers were granted. During the same period, the board decided 3,501 cases, and in sixty-three per cent of these affirmed the decisions of the referees, in nine per cent modified their decisions, and required further evidence in eleven per cent of the cases.<sup>110</sup> During the same year, the newer unemployment insurance appeal board received 506 appeals, held 167 hearings, and disposed of 412 cases. Of the claims to benefits, fifty-three per cent were allowed, thirty-five per cent denied, and in twelve per cent benefits were allowed after a ten-week waiting period.<sup>111</sup> It is interesting to note the effect of the terms of the statute on the matter of appeals. Employers took appeals in about one-quarter of the cases before the board, and of these eighty-eight per cent involved the question as to whether an employer had properly reported the amount of an employee's wage—a question indirectly affecting the amount of an employer's contribution. In Wisconsin, where employers have a strong interest financially in enforcing the provisions of law disqualifying workers from benefits, employers were the appellants in about half the appeal cases, and three quarters of that number concerned the reason for leaving work.<sup>112</sup>

<sup>109</sup> Cloe, *op. cit.*, p. 1178.

<sup>110</sup> *Annual Report of the Industrial Commissioner*, for 12 months ended Dec. 31, 1938, New York Legislative Document No. 21.

<sup>111</sup> *Ibid.*, p. 154.

<sup>112</sup> Cloe, *op. cit.*, p. 1157, note 31.

If the presentation of additional evidence is not allowed before an appeal tribunal, it is imperative to allow claims to be remanded to the officer who conducted the original hearing for their receipt and consideration of further evidence. In workmen's compensation in New York, the industrial board has discretion to refer a case back to a referee to take additional testimony and evidence and for further discussion.<sup>113</sup> In such circumstances, he must take such additional testimony or proof as the board directs, and must then give his decision in the light of all the facts finally before him.<sup>114</sup> The 1939 amendments to the unemployment compensation law of New York authorize cases to be remanded to referees for decision where no oral argument is necessary and where additional testimony does not warrant a hearing before the appeal board.

Particularly in the newer and more experimental procedures such as public assistance, if it is learned that a mistake appears to have been made in reaching the initial determination, if new information is brought forth by the claimant, or if he feels that his circumstances have not been clearly understood, the agency that made the initial decision should have the opportunity to review the facts and to reconsider its previous action before a superior body takes action.<sup>115</sup> The advantage of this procedure may be seen: "When the local agency is given an opportunity to review its action prior to a state hearing, the state may easily determine whether the local agencies are making a genuine review of the case by requesting appellants to inform the state agency if they are not satisfied with the results of local review, and by requiring prompt reporting from the localities on the disposition of these cases. If cases from a particular jurisdiction on return to the state agency show both that the appellant is frequently in the right and that the local agency is failing to give a fair review of cases, it is conclusive evidence of the need to reorganize the local work. In short, if the local agency is given an opportunity to reconsider its action prior to formal review by a state agency, the local prerogatives are properly respected, the interests of the appellants are safeguarded, the state agency is relieved of much useless activity, and the state-control aspects of the appeal procedure are made much more effective."<sup>116</sup>

In order to facilitate decisions on points of law or policy, the

<sup>113</sup> *Industrial Board Rules*, Rules 13 and 14.

<sup>114</sup> *Ibid.*, Application for a rehearing must be made within a reasonable time after the applicant has had knowledge of the facts constituting the grounds on which application is made.

<sup>115</sup> Lansdale, etc., *op. cit.*, p. 306.

<sup>116</sup> *Ibid.*, p. 307.

various steps of administrative appeal may be omitted. Thus the industrial board, in workmen's compensation in New York, may in its discretion hold an original hearing on a case involving a novel question, or one of public policy, or one of jurisdiction.<sup>117</sup>

#### VIII. JUDICIAL REVIEW

The thorny problems involved in discussions of judicial review<sup>118</sup> are beyond the scope of this analysis of the methods by which individual claims to social benefits are handled during the administrative process. Yet it must be noted at this point that judicial review is the last line of defense of individuals whose claims to benefits are denied as a result of the decisions at the various stages of the administrative procedure. To the individual whose claim is not adequately handled by the official with whom he first comes into contact, there remains a hearing by an official one rung higher in the administrative scale, followed by an appeal to still higher authority for review, and last the age-old method of obtaining justice, by appeal to the courts. A realization has begun to creep into the law that these administrative procedures aim to see to it that "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play"<sup>119</sup> and that the administration as well as the judiciary may well be guardians of individual rights as well as liberties.

Therefore, the power of judicial review has come to be increasingly restricted in these cases. The law of New York provides that the decisions of the industrial board are final on questions of fact in all matters within its jurisdiction, and even on questions of law if the board itself is party to an appeal to the courts.<sup>120</sup> But even such statutory provisions making administrative findings final are subject to the power of the courts to examine the entire record and review the facts and determine for themselves whether the findings are supported by substantial evidence.<sup>121</sup> Recent decisions of the courts have served to enforce and develop in a variety of situations

<sup>117</sup> *Industrial Board Rules*, Rule 11.

<sup>118</sup> Among the voluminous literature on judicial review of administrative action, Cf. J. Dickinson, *Administrative Justice and the Supremacy of Law* (1927).

<sup>119</sup> *Morgan v. U. S.*, 304 U. S. 14 (1938).

<sup>120</sup> *Consolidated Laws of New York*, Ch. 67, Art. II, Sec. 23.

<sup>121</sup> *Interstate Commerce Commission v. Union Pacific Ry. Co.*, 222 U. S. 541, 547, 548 (1912); *Interstate Commerce Commission v. Louisville & Nashville Ry. Co.*, 227 U. S. 88 (1913); *Helfrick v. Dahlstrom Metallic Door Co.*, 256 U. S. 199, 204, 205 (1931).

the rule laid down by the Supreme Court over a quarter of a century ago: "Administrative orders, quasi-judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence;' or if the facts do not as a matter of law support the order made."<sup>122</sup> Yet recent decisions have served to reëmphasize the fact that the courts may not advantageously determine conflicts in evidence and pass on the credibility of witnesses,<sup>123</sup> else the judicial system usurps what should be merely administrative functions. "The experience of the past shows that when the courts are given power to review administrative decisions on the merits, they tend to substitute their judgment for that of the administrative agency, frequently stretching their jurisdiction to correct what they conceive to be the mistakes and injustices of the executive branch of the government, with results injurious both to the executive branch and to the courts themselves."<sup>124</sup>

In the development of the service functions of government, it has become particularly clear that the trend of American opinion has begun to flow in the direction of belief in the efficacy of control exercised over minor officials by higher administrative officers. There is an increasing realization that there is no mysterious power in the judicial ermine to make judges of necessity more trustworthy than civil servants in their ability to reach fair conclusions concerning individual rights. In fact, even the courts themselves have begun to realize that the administration and the judiciary are coordinate, not opposed, branches of the government. This attitude is well evidenced by Mr. Justice Stone: "... in construing a statute setting up an administrative agency and providing for judicial review of its action, court and agency are not to be regarded as wholly independent and unrelated instruments of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. Court and agency are the means adopted to

<sup>122</sup> *Interstate Commerce Commission v. Louisville & Nashville Ry. Co.*, 227 U. S. 88, 91 (1913).

<sup>123</sup> *Del Vecchio v. Bowers*, 296 U. S. 280, 286 (1935); *Merchants Warehouse Co. v. United States*, 283 U. S. 501 (1931).

<sup>124</sup> L. A. Tanzer, "Adequacy of the Due Process Clause," *Proceedings*, New York State Bar Association, 62nd Annual Meeting, 1939, p. 223. Cf. cases listed. For opposite point of view, cf. C. Duffy, "To What Extent Should the Decisions of Administrative Bodies be Reviewable by the Courts?," *Amer. Bar. Assoc. Jour.*, Oct., 1939, p. 848.

attain the prescribed end, and so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coördinated action."<sup>125</sup>

This new idea of interrelationship has developed because of the subject-matter with which administrative law has come to deal, and also in part because the number of administrative safeguards has grown and developed. As the trend toward administrative review has become more pronounced, the limitation on the right of judicial review has become more evident. It is true that "the history of Anglo-American courts and the more or less narrowly defined range of their staple businesses have determined the basic characteristics of trial procedure. Modern administrative tribunals are the outgrowth of conditions far different from those. To a large degree, they have been a response to the felt need of governmental supervision over economic enterprise—a supervision which could effectively be exercised neither directly through self-executing legislation nor by the judicial process. The most striking characteristic of the movement has been the investiture of administrative agencies with power far exceeding and different from the conventional judicial modes for adjusting conflicting claims."<sup>126</sup>

Therefore we must look to both the administrative and judicial branches of the government for the development of safeguards for individuals. The Supreme Court itself has reminded us that "courts are not charged with general guardianship against all potential mischief in the complicated tasks of government . . . Interference by the courts is not conducive to the development of habits of responsibility in administrative agencies."<sup>127</sup> Nevertheless the very existence of opportunity for judicial review is itself another guarantee for the rights of individuals.<sup>128</sup>

<sup>125</sup> *United States v. Morgan*, 307 U. S. 783, 799 (1939). Cf. note, *Columbia Law Rev.*, Vol. 29, pp. 1406-1411 (Dec., 1939).

<sup>126</sup> *Federal Communications Commission v. Pottsville Broadcasting Co.*, 60 Sup. Ct. 440, 441 (1940).

<sup>127</sup> *Federal Communications Commission v. Pottsville Broadcasting Co.*, as cited.

<sup>128</sup> The record is usually sent to the state attorney-general's office, and there errors may be found which may necessitate return to the administrative organization for further investigation or correction or both. An attorney-general is not apt to proceed with a case if any administrative safeguards have been neglected. In workmen's compensation cases in New York, if a court appeal is taken at the same time as application for review by administrative authorities, procedure is shortened by a denial of administrative review so that formal findings of fact and rules of law may be prepared for court trial. *Industrial Board Rules*, Rule 16.

## AMERICAN GOVERNMENT AND POLITICS

**The Concurrent Resolution in Congress.** Much has been said and written in recent years concerning executive usurpation of congressional powers. Little attention seems to have been given to encroachment by Congress on the President's right to give or withhold his approval of "every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment)."<sup>1</sup>

The encroachment is found, in legislation empowering the President to act, in the form of a reservation by Congress of the right to nullify or terminate such action by *concurrent resolution*. In spite of the apparently clear meaning of the words of the Constitution, concurrent resolutions have not, for more than a century and a quarter, been sent to the President for approval.<sup>2</sup> Heretofore, this has been excused on the ground, stated in a report of the Senate Judiciary Committee in 1897,<sup>3</sup> that a concurrent resolution does not contain a proposition of legislation. As stated in the House Manual, "in the modern practice, concurrent resolutions have been developed as a means of expressing fact, principles, opinions, and purposes of the two Houses . . . A concurrent resolution . . . is not sent to the President for approval unless it contains a proposition of legislation, which is not within the scope of the modern form of concurrent resolution."<sup>4</sup>

Unsuccessful attempts to extend the scope of concurrent resolutions were made in 1919 and 1920. In both the Senate and the House, concurrent resolutions to end the state of war with Germany were offered but did not emerge from committees in that form.<sup>5</sup> Eventually, the Congress adopted a joint resolution, approved by the President on July 2, 1921, declaring the state of war at an end. Another effort to extend the concurrent resolution's scope was blocked by President Wilson's veto of the Budget and Accounting Bill because it provided that the Comptroller General might be removed by concurrent resolution.<sup>6</sup> Unable to muster

<sup>1</sup> Constitution of the United States, Art. I, Sec. 7.

<sup>2</sup> Congressional practice, judicially upheld, also exempts from submission for presidential approval joint resolutions proposing amendments to the Constitution. Willoughby, *Constitutional Law*, 2d ed., I, p. 593.

<sup>3</sup> Report No. 1335, 54th Cong., 2d Sess., Jan. 26, 1897, pursuant to S. Res., Feb. 20, 1896, asking for an interpretation of the clause in the last paragraph of the River and Harbor Act, July 13, 1892, providing for concurrent resolutions directing the preparation of estimates. See also, A. C. Hinds, *Precedents of the House of Representatives*, IV, sec. 3483.

<sup>4</sup> *House Document No. 700*, 75th Cong., 3rd Sess., sec. 396.

<sup>5</sup> C. A. Berdahl, *War Powers of the Executive in the United States*, Univ. of Illinois, Studies in the Social Sciences, Vol. IX, Nos. 1 and 2, pp. 224-227.

<sup>6</sup> Veto message, returning H. R. 9783 without approval. *Cong. Rec.*, 66th Cong., 2nd Sess., p. 8609 (June 4, 1920).



enough votes to pass the bill over the veto or to obtain a favorable majority for a modified version which would vest power of appointing the Comptroller General in the Supreme Court,<sup>7</sup> the bill's sponsors secured its enactment by the next Congress, after changing it so that the removal could be accomplished by joint resolution.<sup>8</sup> It should be noted that, even with this change, proceedings for removal must originate with Congress. Perhaps President Wilson would not have accepted the bill, even with this change, although Democratic Senator Robinson thought "that[it] would seem to meet, in large degree at least, the objection which was urged by the executive when he vetoed the bill."<sup>9</sup> President Harding approved the measure, perceiving no constitutional obstacle.

In circumstances seemingly much more favorable politically to the chief executive than when Wilson vetoed the Budget and Accounting Bill, President Roosevelt has signed two important measures, the Reorganization Act of 1939 and the so-called Lend-Lease Act of 1941, in which Congress reserves the right, by concurrent resolution, to nullify or terminate the exercise of powers therein granted to the President. Section 5 of the former act provides, in part, that "the reorganizations specified in the plan shall take effect in accordance with the plan: (a) upon the expiration of sixty calendar days . . . only if during such sixty-day period there has not been passed by the two Houses a concurrent resolution stating in substance that the Congress does not favor the reorganization plan."<sup>10</sup> Similarly, Representative Dirksen's amendment incorporated in section 3-c of the Lend-Lease Act says: "Nor shall such powers be exercised if terminated by a concurrent resolution by both Houses of Congress."<sup>11</sup>

The congressional debates show a wide difference of opinion as to the effect of the foregoing provisions. With regard to the restrictive clause in the Reorganization Bill, Representative Detter quoted from a letter in which President Roosevelt had called attention to "the constitutional question involved in the passage of a concurrent resolution, which is only an expression of congressional sentiment," and had asserted that "such a resolution cannot repeal executive action taken in pursuance of law."<sup>12</sup> Representative Wolcott declared: "A concurrent resolution, therefore, which gives either positive or negative legislative effect to any action comes within the category of those orders, resolutions, or bills mentioned in the Constitution, and must be presented to the President for approval."<sup>13</sup> A similar view had been expressed by Representative James W.

<sup>7</sup> H. R. 14441. *Ibid.*, 8647 (June 5, 1920).

<sup>8</sup> Sec. 303 of the act, approved June 10, 1921, provides for removal by joint resolution.

<sup>9</sup> *Cong. Rec.*, 67th Cong., 1st Sess., p. 659 (Apr. 26, 1921). Senate Minority Leader Underwood also supported the bill. <sup>10</sup> 53 *Stat.*, 562-563.

<sup>11</sup> *Cong. Rec.*, 77th Cong., 1st Sess., p. 767 (Feb. 6, 1941).

<sup>12</sup> *Cong. Rec.*, 76th Cong., 1st Sess., p. 2479 (Mar. 8, 1939). <sup>13</sup> *Ibid.*, p. 2478.

Good, House sponsor of the budget and accounting bills in 1919 and 1920. He said: "My understanding of a concurrent resolution is that if it has the effect of law it must be signed by the President. The name offered to a resolution of this kind does not determine its status. We cannot pass a resolution that has the effect of law without the signature of the President of the United States."<sup>14</sup>

Supporters of the clauses in the Seventy-sixth and Seventy-seventh Congresses, on the contrary, were positive that they provided a means to get around the requirement of executive approval. According to Representative Cox, "To say that the Congress cannot attach the condition that it is within the power of either House to vacate whatever is done under the grant is clearly unsound. The condition is part of the legislation."<sup>15</sup> When Representative Taber, who wanted to accomplish the same result, declared that "the resolution, under the Constitution, would have to be submitted to the President for his approval," Cox's reply was, "Not at all, sir." He explained that "the Congress, in the bill before us, proposes to set up a condition whereby the two Houses through joint action can negative, not an executive order, but a report made by the delegate of the Congress itself, acting as a ministerial agent."<sup>16</sup> Claiming the provision in the Reorganization Act as a precedent, Representative Dirksen defended his amendment to the Lend-Lease Bill, asserting that "by concurrent resolution of the two houses, without the necessity of the signature of the President, we can reach out in case of excesses and abuses and take back the legislative power that is today being delegated. . . . We can make firm and certain that the exclusive war-making power of the Congress will not leave this body."<sup>17</sup>

The reasoning of the advocates of this use of the concurrent resolution seems faulty in at least three particulars. First, it is obvious that they seek to avail themselves of the long-established practice of not submitting concurrent resolutions to the President at the same time that they attempt to convert them to a new use. Second, to say that the President acts as a "ministerial agent" of Congress in preparing reorganization plans is hardly consistent with the accepted doctrine that the Constitution established three coordinate branches. Finally, the simple majority requisite for passing a concurrent resolution does not have the "exclusive war-making power" which Representative Dirksen conveniently assumed.

The attitude of the majority leaders in Congress toward this new use of

<sup>14</sup> *Cong. Rec.*, 67th Cong., 1st Sess., p. 1855 (May 27, 1921). Obviously he meant that the Congress could not pass the resolution by a simple majority "without the signature of the President."

<sup>15</sup> *Cong. Rec.*, 76th Cong., 1st Sess., p. 2477 (Mar. 8, 1939).

<sup>16</sup> *Ibid.*, p. 2479.

<sup>17</sup> *Cong. Rec.*, 77th Cong., 1st Sess., p. 767 (Feb. 6, 1941).

concurrent resolutions has not been entirely clear. Without strenuously resisting the move to put the reservation in the Reorganization Bill—perhaps because the leading advocate in the House was Representative Cox, a Democrat—the Administration's forces avoided the issue by securing the adoption of a joint resolution providing that Reorganization Plans No. 1 and 2 should take effect on July 1, 1939, "notwithstanding the provisions of the Reorganization Act of 1939" which would have deferred the plans' going into effect until sixty days after their submission, respectively, on April 25 and May 9, 1939.<sup>18</sup> After the Dirksen amendment to the Lend-Lease Bill had been accepted in the House committee of the whole by the narrow margin of 148 to 141, Majority Leader McCormack said: "I can assure the members of the House there will be no effort made to take the Dirksen amendment out of the bill. The Dirksen amendment states that Congress, by concurrent resolution, and this means a majority vote in both branches, can declare that the emergency does not exist any more."<sup>19</sup> The statement seems to indicate that the House leadership acquiesced in the projected use of the concurrent resolution to vacate or terminate powers granted to the President. Representative Dirksen later cast doubt on this assumption by quoting from a United Press dispatch, dated February 6 (the day his amendment was adopted) as follows: "Both Democratic Leader John W. McCormack and Speaker Sam Rayburn said they did not believe that a proposed amendment by Everett M. Dirksen, Republican, Illinois, providing specifically that the President's power under the bill can be terminated by a concurrent resolution of Congress at any time, would be any limitation at all."<sup>20</sup> Neither McCormack nor Rayburn disavowed the United Press story in the ensuing debate.

Perhaps the termination of the President's power by concurrent resolution is no limitation at all. Perhaps the congressional leaders tolerate the clause as a face-saving device for members who are uncertain of their constituents' reactions. Yet there must be some significance for the constitutional balance of powers in the politically-powerful President Roosevelt approving important legislation in which Congress has reserved the right to terminate the powers therein granted by concurrent resolution. Even if the reservation is not likely to be exercised in the near future, the inclusion of the clause establishes a precedent.<sup>21</sup>

HOWARD WHITE.

*Miami University*

<sup>18</sup> S. Joint Res. 138. 53 *Stat.* 813, approved, June 7, 1939. Reorganization Plans 1 and 2. *Ibid.*, pp. 1423, 1431.

<sup>19</sup> *Cong. Rec.*, 77th Cong., 1st Sess., p. 844 (Feb. 8, 1941). <sup>20</sup> *Ibid.*

<sup>21</sup> There would seem to have been more reason, so far as subject-matter of legislation is concerned, in providing that the determination of the method of apportioning representatives among the states should be by concurrent resolution. But the

**Divisions of Opinion Among Justices of the U. S. Supreme Court, 1939-1941.** "We are under a Constitution," said Charles Evans Hughes when he was governor of New York, "but the Constitution is what the judges say it is . . ." Several theories of jurisprudence have arisen which attempt to take into account this personal element in the judicial interpretation and making of law. The so-called "realistic" school has argued that law is simply the behavior of the judge, that law is secreted by judges as pearls are secreted by oysters.<sup>1</sup> A less extreme position was taken by the late Justice Holmes, who said: "What I mean by law is nothing more or less than the prediction of what a court will do." While these views go rather far in eliminating any idea of law as a "normative, conceptual system of rules," no one doubts that many judicial determinations are made on some basis other than the application of settled rules to the facts, or that justices of the United States Supreme Court, in deciding controversial cases involving important issues of public policy, are influenced by biases and philosophies of government, by "inarticulate major premises," which to a large degree predetermine the position they will take on a given question. Private attitudes, in other words, become public law.

More precisely, it is the private attitudes of the majority of the Court which become public law. As an inexact science, issues at law are settled by counting the noses of jurors and justices. About 150 times every term the judges of the Supreme Court announce to the world in a formal written opinion the result of their balloting on the questions raised by a legal controversy before the Court. Happily, in the great majority of these ballots the decision is unanimous. In such cases, presumably the facts and the law are so clear that no opportunity is allowed for the autobiographies of the justices to lead them to opposing conclusions. It is always possible that the members of the Court may be agreeing for different reasons, but no hint of that fact is given unless concurring opinions are written.

In a substantial number of cases, however, the nine members of the Court are not able to see eye to eye on the issues involved. Working with an identical set of facts, and with roughly comparable training in the law, they come to different conclusions. If our thesis is correct, these divisions of opinion grow out of the conscious or unconscious preferences and prejudices of the justices, and an examination of these disagreements should afford an interesting approach to the problem of judicial motivation.

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act to provide for the Fifteenth and subsequent decennial censuses and to provide for apportionment of representatives in Congress, approved June 18, 1929, in Sec. 22 (b), provides the method which shall be employed "if the Congress . . . fails to enact a law apportioning Representatives among the several States," after the President has submitted a statement showing the results of applying various mathematical methods.

<sup>1</sup> This figure and the quotations following are taken from Francis D. Wormuth, "The Dilemma of Jurisprudence," in this REVIEW, Vol. 35 (1941), p. 44.

These cases in which dissent is expressed are particularly deserving of study because they furnish data which are not simply the verbalizations of justices, to be handled by the typical process of interpretation, analysis, comparison, search for inconsistencies, and general legal exegesis. Instead, they contribute the tangible data of a series of yes and no votes on a variety of issues. Analysis of this voting behavior should be of value in explaining Supreme Court action, in revealing basic relationships among the justices, and, in short, in "predicting" the law.

It may be suggested that the nature of the division of opinion on the Supreme Court at any given time is a matter of common knowledge among those who follow Supreme Court thinking. In the hope, however, that a more precise analysis might have some value, the divisions of opinion in Supreme Court decisions during the past two years (the October terms, 1939 and 1940) have been analyzed. This period was one in which the membership of the Court was fairly stable. The only changes in its composition came when Butler died soon after the beginning of the 1939 term (without having participated in any cases) and was replaced by Murphy, and when McReynolds resigned during the 1940 term.

During this two-year period, dissent was registered to more than one-fourth of the decisions rendered by the Court. In the 1939 term, the rate was 30 per cent (42 dissents in a total of 140 decisions), and for the 1940 term it dropped slightly to 28 per cent (47 dissents out of 169 decisions). There were thus 89 decisions during the period in which one or more of the justices dissented, at least in part, from the conclusion reached by the majority.<sup>2</sup> Table I shows the extent of each justice's participation in these dissents. The judge most persistent in disagreement was McReynolds, who took a minority stand in 22 per cent of the decisions in which he participated. Justices Roberts and Hughes were next in order, with records of 18 per cent and 12 per cent respectively. On the other hand, Frankfurter found himself on the losing side in only four of the 309 decisions rendered by the Court, a fact which calls attention to the central position which he appears to occupy on the Court. It should also be noted that he was the only justice whose dissents did not increase in number from 1939 to 1940 (with the exception of McReynolds, who did not serve out the 1940 term).

<sup>2</sup> It should be noted that some 10 or 11 of these dissents were in "companion" cases, i.e., cases involving an issue identical with that decided in a preceding case, and requiring little or no new discussion. For statistical treatment, these cases might have been eliminated, to prevent double weight being given to divisions of opinion in a single situation. However, they have not been excluded, for various reasons, and it is not believed that any distortion has resulted from their inclusion. In two cases (61 S.C. 845, 861), there are dissents by two groups of justices involving separate aspects of the decision; these have been treated as two distinct dissents, and thus there are 91 dissents in the 89 cases.

Justices Reed, Murphy, and Stone are also shown by the data to be consistently members of the Court's majority.

TABLE I  
PARTICIPATION OF SUPREME COURT JUSTICES IN DISSENTING  
OPINIONS, 1939 AND 1940 TERMS

<i>Justice</i>	<i>Number of Dissents</i>			<i>Opinions Participated In</i>	<i>Per Cent Dissents</i>
	<i>1939</i>	<i>1940</i>	<i>Total</i>		
McReynolds*	32	9	41	184	22
Roberts	23	31	54	300	18
Hughes	14	24	38	305	12
Black	4	15	19	306	6
Douglas	4	15	19	303	6
Stone	4	7	11	303	4
Reed	1	8	9	302	3
Murphy**	1	6	7	215	3
Frankfurter	2	2	4	309	1

\* Resigned February 1, 1941.

\*\* Began service February 5, 1940.

Of these 89 dissents, 25 were one-man affairs. McReynolds dissented alone in 13 cases, Roberts in 10, and Reed and Stone once each. In the other 64 dissents, the concurrence of two, three, or four justices in deviation from the majority view raises interesting problems of judicial interrelationships. Was there a regular pattern of dissent? Did certain justices tend to agree with each other in expressing dissent? Table II attempts to answer such questions by showing the number of times each justice joined each other justice in a dissenting opinion. A well-defined pattern of relationships was found to exist on the Court, and the names have been arranged in the table so as to bring out this relationship most clearly. Figures on the one-man dissents have been included in parentheses.

The table appears to reveal a marked division of the justices into two wings or groups. The first is composed of McReynolds, Roberts, Hughes and Stone; the other includes Murphy, Frankfurter, Black, and Douglas. With the exception of two cases, no justice in one of these groups ever joined in a dissenting opinion with a justice from the other group. While every one of the eight justices on occasion dissented in company with other members of his own bloc, in only two out of 89 dissents was there fraternization with the enemy. Both of these exceptional cases saw Roberts crossing the line to vote with Black and Douglas.<sup>3</sup> Justice Reed presents a special problem, since he was found in company with justices

<sup>3</sup> The cases are *Neuberger v. Commissioner of Internal Revenue*, 61 S.C. 97 (1940), and *Union Pacific Rr. Co. v. U. S.*, 61 S. C. 1064 (1941).

from both groups. His nine dissents included four with judges from each wing, and one lone dissent. He thus appeared to have one foot in each camp.

To the extent that the above table appears to show the existence of two self-contained blocs of opinion on the Court, it obviously misrepresents the situation. The pattern of relationships which begins to emerge from the table needs to be made clearer by presenting more complete data which will show all judicial agreements, whether on the majority or minor-

TABLE II  
AGREEMENTS AMONG SUPREME COURT JUSTICES IN DISSENTING  
OPINIONS, 1939 AND 1940 TERMS

<i>Justice</i>	<i>McReynolds</i>	<i>Roberts</i>	<i>Hughes</i>	<i>Stone</i>	<i>Reed</i>	<i>Frankfurter</i>	<i>Murphy</i>	<i>Black</i>	<i>Douglas</i>
<i>McReynolds</i>	(13)	26	20	4	2				
<i>Roberts</i>	26	(10)	33	5	3			2	2
<i>Hughes</i>	20	33	—	10	3				
<i>Stone</i>	4	5	10	(1)	1				
<i>Reed</i>	2	3	3	1	(1)			4	4
<i>Frankfurter</i>						—	1	4	4
<i>Murphy</i>						1	—	7	7
<i>Black</i>		2			4	4	7	—	19
<i>Douglas</i>		2			4	4	7	19	—

ity side. Table II reveals that Frankfurter and Hughes were never in dissent together, but it does not tell us how often they agreed with each other when other justices were in dissent. Table III, consequently, is arranged to show the extent of agreement between each pair of justices in the 89 controversial cases (or rather, in so many of them as were participated in by that pair). The number of agreements is expressed in percentages of total cases participated in by each pair.

The table reveals some interesting facts. Justices Black and Douglas are shown never to have been on opposite sides of a decision during the entire period. On the other hand, McReynolds disagreed with them in three-fourths of all the decisions in which there was division of opinion. Chief Justice Hughes was closer to Stone than to any other justice, Stone found himself most often in agreement with Frankfurter, and Frank-

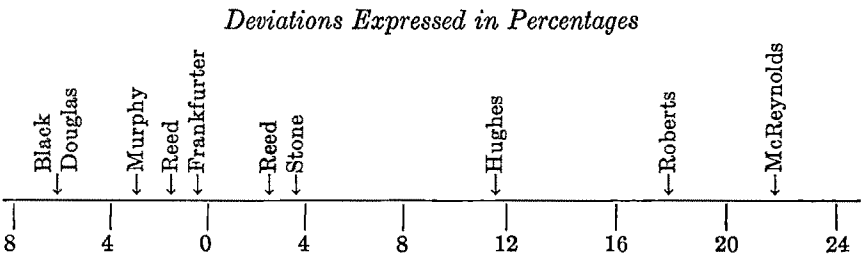
furter's views coincided most often with those of Murphy. The most important fact about this complex of individual relationships, however, is that it conforms to a basic underlying pattern. Examination of the table

TABLE III  
AGREEMENTS AMONG SUPREME COURT JUSTICES IN CONTROVERSIAL CASES,  
1939 AND 1940 TERMS  
(In Percentages)

<i>Justice</i>	<i>McReynolds</i>	<i>Roberts</i>	<i>Hughes</i>	<i>Stone</i>	<i>Reed</i>	<i>Frankfurter</i>	<i>Murphy</i>	<i>Black</i>	<i>Douglas</i>
<i>McReynolds</i>	—	64	64	41	35	31	38	24	24
<i>Roberts</i>	64	—	75	51	45	45	39	37	36
<i>Hughes</i>	64	75	—	78	63	64	53	49	49
<i>Stone</i>	41	51	78	—	81	84	75	69	68
<i>Reed</i>	35	45	63	81	—	86	80	79	79
<i>Frankfurter</i>	31	45	64	84	86	—	91	85	84
<i>Murphy</i>	38	39	53	75	80	91	—	89	89
<i>Black</i>	24	37	49	69	79	85	89	—	100
<i>Douglas</i>	24	36	49	68	79	84	89	100	—

shows that with the justices ranked as they are, every member of the Court is placed next to or between the justice or justices with whom he is most completely identified in agreement, and farthest away from those with whom he has least in common. The only important exceptions to this rule are found in the McReynolds-Murphy and the Stone-Frankfurter relationships.

The division of opinion thus takes the form of the figure below, which locates the justices along a continuum from one extreme to the other according to the direction and intensity of their deviation from the normal majority position of the Court, represented by the zero point on the scale.





Frankfurter is closest to this point, since he dissented from only one per cent of the Court's decisions. Reed is given a position on both sides of the zero point, since his dissents were divided between the two wings. The scale makes apparent the existence of a fairly cohesive six-judge majority, most of the dissents being entered by the right-wing minority of McReynolds, Roberts, and Hughes.

This use of the term "right-wing" assumes that the division of opinion on the Court results from differences of opinion as to desirable public policy. It assumes that the above scale reflects relative "liberalism" and "conservatism" as those terms are understood by the man in the street. This assumption should be checked by an examination of the issues actually involved in the cases where dissents were filed. Did all of these cases present issues of public policy on which liberals and conservatives might well be expected to differ, or did a number of them involve "purely legal" questions? A proper answer on this point would require the setting up of elaborate criteria for distinguishing between these two kinds of issues, and application of the criteria in a detailed analysis of each case. Such an analysis has been attempted here to only a limited degree, and covering only the dissents of the 1939 term.

A case which requires a decision as to the extent of governmental powers, or presents an issue between the government and an individual, is obviously one in which the result may be affected by the judges' views on public policy. Our present stereotypes picture the conservative as anti-government (in the sense of opposing new or more effective forms of governmental control over individuals or corporations), and the liberal or New Dealer as pro-government.<sup>4</sup> An examination of the 1939 term's 42 dissents shows that in at least 36 an issue was presented which required the justices to vote for or against the government, to uphold or deny a government contention, to approve or disapprove an exercise of governmental authority.<sup>5</sup> The voting record of the justices in these 36 cases shows that in 27 the dissenters were right-wingers taking an anti-government position; in three more cases, the dissenters were left-wing justices voting for the government. Thus in 30 of the cases judicial action ran true to form.

Of the six remaining cases in this group, four saw the situation exactly

<sup>4</sup> The Court's newest justice, former Attorney-General Jackson, has recently commented feelingly on the "anti-government" attitude (not simply anti-New Deal) of the Court's conservative majority during the pre-deluge period of 1935-1936. See Robert H. Jackson, *The Struggle for Judicial Supremacy* (New York, 1941), p. 170.

<sup>5</sup> The citations are: 308 U.S. 147, 313, 331, 338, 473, 488; 309 U.S. 33, 70, 83, 106, 149, 176, 310, 331, 350, 370, 430, 517, 527, 530, 551; 310 U.S. 53, 69, 80, 88, 106, 113, 141, 150, 371, 381, 434, 534, 554, 573, 586.

reversed, with the government's support coming from the right wing.<sup>6</sup> The explanation is simple, however. All four were civil liberties cases (involving free speech, the right to picket, and freedom from wire-tapping), and in all four McReynolds was the lone dissenter voting to uphold government restrictions on individuals. His action was in line with the traditional conservative position on the Court. It will be recalled that in 1931 the famous free press case of *Near v. Minnesota*<sup>7</sup> brought out a perfect conservative dissenting lineup of Butler, Van Devanter, McReynolds, and Sutherland. By the 1939 term, only one of this old guard remained to take a stand against civil liberties.

In the remaining two of these 36 dissents, the vote is completely inexplicable in terms of the scale positions of the justices. One dissent was that of Justice Stone in the well-known flag salute case,<sup>8</sup> in which he alone maintained a strict civil liberties position in the face of the justification for the compulsory salute which the rest of the Court found compelling. The other exception came in a case presenting the thorny question of taxability of trust income, and saw Reed alone voting for the government's contention.<sup>9</sup> Apart from these cases, however, the judicial reaction to a "government" issue was so consistent that it must be considered a definite factor in the Court's divisions of opinion.

Examining the 42 dissents of the 1939 term from another point of view, we find 18 cases in which the Court was required to make a decision for or against "business."<sup>10</sup> The issue was presented in many forms—the validity of a business tax, an alleged violation of the anti-trust laws, the constitutionality of a federal or state regulatory scheme. But wherever the issue was present, the reaction pattern was consistent, support for business coming always from the conservative end of the Court. Specifically, there were 15 dissents by right-wingers taking the side of business, and three by liberals voting against a majority decision favorable to business. Again, in five cases during the 1939 term the Court was dealing with a "labor" issue, and here also the reaction was uniform.<sup>11</sup> There were four conservative dissents to decisions favoring labor, and one dissent by Douglas and Black from a majority decision slightly weakening the effect of a N.L.R.B. order.

<sup>6</sup> *Schneider v. State*, 308 U.S. 147 (1939); *Nardone v. U.S.*, 308 U.S. 338 (1939); *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Carlson v. California*, 310 U.S. 106 (1940). <sup>7</sup> 283 U.S. 697 (1931).

<sup>8</sup> *Minersville School District v. Gobitis*, 310 U.S. 586 (1940).

<sup>9</sup> *Helvering v. Fuller*, 310 U.S. 69 (1940).

<sup>10</sup> The citations are: 308 U.S. 165, 331; 309 U.S. 190, 280, 310, 350, 370; 310 U.S. 1, 53, 113, 141, 150, 371, 381, 434, 469, 534, 573.

<sup>11</sup> *National Licorice Co. v. N.L.R.B.*, 309 U.S. 350 (1940); *Paramino Co. v. Marshall*, 309 U.S. 370 (1940); *Thornhill v. Alabama*, *supra*; *Carlson v. California*, *supra*; *Apex Hosiery Co. v. Leader*, 310 U.S. 469 (1940).

The 1939 dissents included seven cases in which state or local action was attacked as violating provisions of the federal Constitution; for example, state and local taxes were resisted as burdening interstate commerce or contrary to due process or infringing a privilege of national citizenship.<sup>12</sup> Here the consistent policy of the justices at the Black-Douglas end of the Court was to uphold state action, in line with the traditional liberal belief that state legislative powers should be left as unrestricted by federal constitutional limitations as possible. It may also be noted that an issue involving the extent of judicial review was raised in some form in four cases; the left-wing wanted to narrow review, and the right-wing opposed any narrowing.<sup>13</sup> Public operation of a power system was an issue in one case; McReynolds opposed it.<sup>14</sup> The rights of a debtor under the Frazier-Lemke Act were involved in another case; a liberal minority voted in his favor.<sup>15</sup>

One or more of the seven issues just considered was present in every one of the cases where opinion was divided during the 1939 term. In other words, none of these cases appears to present a "purely legal" question, for in each instance the observer can find a facet of the case which might offer an opportunity for the decision to be influenced by judicial views as to desirable public policy. It is not contended, of course, that the decisions were motivated wholly by the personal views of the justices, but the data clearly indicate that these views had a considerable effect in the process of making up the judicial mind.

It would be interesting to discuss the records of several of the individual justices in the light of the information which this analysis has supplied. The case of the Court's new Chief Justice is particularly worthy of notice. The participation of Justice Stone in right-wing dissents may seem strange, in view of his reputation as one of the soundest and ablest liberals on the Court. Two explanations suggest themselves. One is that he has deviated slightly to the right in his views with the passage of time. The other is that he has maintained very nearly his original position, but that the Court has with recent appointments moved so substantially leftward that views which put Stone to the left of the Court ten years ago now occasionally leave him exposed in dissent on the right. Whatever the cause, the process appears to be accelerating, for Stone's dissents with the con-

<sup>12</sup> *McGoldrick v. Berwind-White Co.*, 309 U.S. 33 (1940), and two companion cases; *Ford Motor Co. v. Beauchamp*, 308 U.S. 331 (1939); *Madden v. Kentucky*, 309 U.S. 83 (1940); *McCarroll v. Dixie Greyhound Lines*, 309 U.S. 176 (1940); *Osborn v. Ozlin*, 310 U.S. 53 (1940).

<sup>13</sup> *McCarroll v. Dixie Greyhound Lines*, *supra*; *Perkins v. Lukens Steel Co.*, 310 U.S. 113 (1940); *U.S. v. Bush & Co.*, 310 U.S. 371 (1940); *Railroad Commission v. Rowan & Nichols Oil Co.*, 310 U.S. 573 (1940).

<sup>14</sup> *U.S. v. San Francisco*, 310 U.S. 16 (1940).

<sup>15</sup> *Union Joint Stock Land Bank v. Byerly*, 310 U.S. 1 (1940).

servative group numbered three in the 1939 term and six in the 1940 term.

The general result of this study has been to emphasize the influence of personal attitudes in the making of judicial decisions and the interpretation of law.<sup>16</sup> To prevent over-emphasis on this point, it would be well to recall that even in a Court representing as wide a range of views as has been found during the last two terms, 71 per cent of the cases were decided by unanimous vote. Where there were divisions of opinion, however, they appear to be for the most part explicable in terms of the opinions of the respective judges on public policy. This conclusion hardly comes as a surprise. For few are likely to deny that justices of the Supreme Court have always, to paraphrase Justice Frankfurter, "read the laws of Congress through the distorting lenses" ground by their own experience. On the other hand, there are many who will agree that the Supreme Court's vision is better today than it has been for many years past.

C. HERMAN PRITCHETT.

*University of Chicago.*

**Unconstitutional Legislation in Minnesota.**<sup>1</sup> This study is concerned with certain phases of the operation of the power of the courts to declare legislative enactments unconstitutional. It is concerned with the exercise of this power rather than with the rules governing or applicable to the exercise of the power itself. For this reason, it might be thought of as a

<sup>16</sup> One further illustration of this point may be supplied. During the 1940 term, the Supreme Court twice had to consider problems raised by the establishment of a new terminal produce market at Kansas City, Kansas, which was promoted by the Union Pacific Railroad and the city in an evident effort to attract trade away from the existing terminal at Kansas City, Missouri. The legal questions raised in the two cases were quite different. In the first (*L. Singer & Sons v. Union Pacific R. Co.*, 61 S.C. 254 (1940)), the question was whether Kansas City, Mo., could as a "party in interest" under the Transportation Act of 1920, seek to enjoin the construction of an extension by the railroad to serve this competing market. In this case, the city lost. In the second case (*Union Pacific R. Co. v. U.S.*, 61 S.C. 1064 (1941)), the question was whether the Elkins Act had been violated by the action of Kansas City, Kan., which, in coöperation with the railroad, had offered concessions to induce leasing of space in the new terminal. Here the court held that the act had been violated. Seven members of the court participated in both decisions, and it is interesting to note that three of the justices (Roberts, Douglas, and Black) took a position on the legal points involved which favored the new terminal in both cases, while three other justices (Stone, Hughes, and Reed) opposed it in both cases. Justice Frankfurter alone switched sides between cases, and was with the majority in both. This incident suggests that the judges decided the legal questions in terms of their attitude towards the terminal and the justifiability of this kind of competition.

<sup>1</sup> Assistance in the preparation of these materials was furnished by the personnel of the Work Projects Administration, Official Project No. 165-1-71-154. A research grant was received also from the Graduate School Research Fund of Indiana University.

fact-study in the field of unconstitutional legislation. This does not mean that the rules and principles of law applicable to the subject are ignored, but it means that they are assumed as a background against which the study is to be placed.

In studying the legal phases of unconstitutional legislation over a period of several years, the author became interested in certain questions to which the answers could not be found in the formal rules of law themselves. He wondered whether unconstitutional laws were questioned in court soon after they were enacted or long thereafter. He was interested to learn whether judges divided or agreed among themselves, for the most part, on constitutional issues. The discussion of injunction in recent literature led him to ask what rôle injunction had played in litigation resulting in declaring statutes invalid. What remedies were the more common in this field of litigation? What were the subjects with which unconstitutional statutes dealt? These and numerous other questions came to mind as he worked upon the materials, and as a result he undertook an inquiry into some of the sources in which the answers could be found. Minnesota was selected as one of the states to be studied, and certain phases of Minnesota experience were explored. Those which have been sufficiently explored to justify presentation to the bench and bar and interested scholars are dealt with in this article. More extensive studies will be required to follow to its last implication each and every query that arises upon reflection. But it is felt that the studies have progressed sufficiently to permit of some general conclusions, and these are offered in connection with the analyses as very tentative, indeed, yet as justified by the Minnesota materials.

# I

The historical incidence of judicial review and of unconstitutional legislation in Minnesota can best be presented in the form of a table. The list given below presents these materials from the beginning of the state up to about eight years ago. As one studies this table, certain facts stand out as quite obvious. The difference between particular sessions of the legislature in their experience with statute-making, one session having few unconstitutional statutes in its product and another having several, is of course noticeable, but even more striking than these differences is the long upward swing of the curves. There are periods in the history of the state when the legislature experiences greater difficulty than in other periods with the operation of judicial review.

To illustrate, it is clear that fewer unconstitutional laws were enacted during the period from 1854 to 1895 than after 1895. That is, fewer laws were declared unconstitutional during that period. It is obvious that the session of 1867, as well as the sessions of 1869, 1870, 1875, 1876, and 1879,

had much less difficulty on this score than did those of 1877, 1881, and 1895. Were the lawyers less active during the earlier period of the state's history in this field, or less learned? Did it become a fashion with higher standards of admission to the bar to assail the constitutionality of legislation? With respect to the composition of the legislature, certainly the number of lawyer-legislators has always been large enough to have saved the

NUMBER OF UNCONSTITUTIONAL STATUTES ENACTED AT EACH SESSION  
OF THE LEGISLATURE OF THE STATE OF MINNESOTA

<i>Session</i>	<i>No. of Statutes</i>	<i>Session</i>	<i>No. of Statutes</i>	<i>Session</i>	<i>No. of Statutes</i>
1854	1	1877	5	1903	4
1857	1	1878	4	1905	4
1858	4	1879	1	1907	6
1860	3	1881	7	1909	4
1862	3	1883	2	1911	2
1863	1	1885	5	1913	6
1864	1	1887	6	1915	2
1865	1	1889	6	1917	4
1866	5	1891	7	1919	3
1867	1	1893	6	1921	3
1868	1	1894	4	1923	10
1869	1	1895	12	1925	6
1870	1	1897	8	1927	4
1874	2	1899	3	1929	7
1875	1	1901	7	1931	2
1876	1	1902	1	1933	2

sessions from constitutional mistakes both in the earlier years and in the later years. The answer cannot be found in that quarter. Were different interest groups affected by legislation as time went on; or did the character of laws change?

When the materials are broken down into component parts and the subject-matter of statutes is analyzed, it becomes clear that certain subjects play a more prominent rôle than others in unconstitutional legislation. Distress legislation, though on its face not always seeming to be of that type, accounts for some of the cases between 1877 and 1902. New subjects for the legislature to concern itself with, such as corporations, account for a few more cases. Counties, as a subject, similarly can always be depended upon to furnish some unconstitutional enactments throughout the entire period. Separation and delegation of powers dealing with the relation of the courts to the other branches of government also yielded some cases during this period. Political party developments and shifts bring up a few unconstitutional statutes, as in 1879, 1887, and 1894. Homesteads, estates, insurance, licenses (showing the rising problem of protecting home markets), liens, mortgages, municipal government, and

officers account for still more. One gets the feeling as he runs through the cases that during this period the legislature was called upon to enact laws upon an increasing number of subjects, and that as it entered new regulatory fields it was working out new techniques, feeling its way as it went. Beginning with this period, statutes falling under the heading of police power legislation tend to come to the fore. Railroad legislation and tax legislation, quite naturally in the light of the state's general development, likewise show up as friction points in the legislative process.

In the later periods, some new subjects crop up, such as schools, public improvement legislation, more of local government problems, and of taxation, and roads and bridges (now commonly thought of as highways), continue to appear.

The first two decades of the present century were relatively quiet, but the twenties show difficulties again. It will be interesting to see whether our constitutional fever chart shows another continued upward swing during the depression years (meaning until 1940). Further studies will be necessary to answer this question.

From the standpoint of political parties and their programs and their control of legislature and court, the conclusion is pretty clear that there is very little, if any, substantial connection between the two. The judicial branch of Minnesota government has, with only a few notable exceptions, been relatively stable from a political point of view, with a strong tendency towards electing the sitting judges, augmented by nonpartisan election in recent years, and this is especially true of the supreme court of the state. There is no substantial evidence to indicate that there is any correlation between one or another party being in control of the legislature and the amount of unconstitutional legislation being enacted. That there is some correlation between social and economic distress and unconstitutional legislation has been mentioned, and of course there is some correlation between economic distress and third party movements. This, however, in the case of Minnesota, seems not to be borne out completely, because in more recent times the third party movements have tended to become stabilized into a second major party, and the figures do not bear out the assumption that this correlation might run throughout its course. In general, the relationship between social unrest and unconstitutional legislation is not nearly as striking as one might expect, and the facts, as noted above, cannot be accounted for by the existence of an elective judiciary.

## II

How long a period elapses between the time when a statute is enacted and when it is assailed? How much time is consumed in determining the question of constitutionality?

From some points of view, the practice of judicial review is very unsystematic and accidental. Courts do not sit as councils of censors and declare the particular enactments of the legislature constitutional or unconstitutional as they are signed by the governor and deposited in the office of the secretary of state. Unconstitutional statutes, known to be such by all concerned, as in the cases of special and local laws, often remain on the statute-books for years without being questioned, and for all that we know will remain there indefinitely. Under our common law system, as it is augmented by procedural statutes, the judicial practice of invalidating statutes is brought into operation only when private litigants initiate the procedures. If, as occasionally occurs, the government, acting in the person of an official, initiates the procedure, the common law technique still applies. This common law feature of our practice will be mentioned again in another connection, but it is one of the basic factors conditioning the operation of judicial review as a political or governmental institution in American life.

Based, as this practice is, upon the conception of injury to legal rights, court procedure in this field, as in others, operates at the instance of an individual or corporation, and this means that an action may be brought or a suit may be filed six months after enactment, or six years thereafter, or even 60 years later. The time when the action is brought may, of course, in some instances affect the likelihood that the statute will be held constitutional, although time alone is not a determinative factor in all cases.

The data on the period between enactment and the raising of the question in the *trial court* were not available for a large number of cases, and it would have been necessary to consult the court records in almost all the districts of the state in order to complete the picture. In the small sampling that was feasible, involving slightly over 30 cases, the author's eye took note of the fact that one case fell under each of the headings of 10, 15, and 20 years. In three instances, four years elapsed between enactment and the first challenge.

The chart showing the number of years elapsing between enactment and *final decision* covered such a large number of cases that the figures permitted of different treatment. The average number of years was four and one-half. At the outer limits, statutes ran for 40, 25, 20, and 15 years in individual instances. Twenty-four statutes were in force for 10 years before being held unconstitutional. Fourteen statutes were in operation for five years before being invalidated. Twenty-three statutes were in effect for three years.

There can be little question about the undesirable effects occurring in some of these instances of having a statute held invalid after the expiration of so many years. The legal problems incident to this situation have in recent years been to the fore; the time elapsing in some of the New Deal



cases was relatively short, but even in some of them troublesome legal problems resulted.

It is interesting to note that no statute of limitations is applicable as such to actions involving constitutional litigation, and it is an interesting question whether such a statute would be constitutional in the eyes of the courts. There is much to be said in favor of some time limitation in this field of litigation. The courts themselves could, of course, work this out by either rules of practice or judicial decision.

On the basis of the small sample of cases in which it was possible to get the date of *initial action*, it is interesting, though not conclusive, to note that the number of months required to settle the litigation in four cases exceeded 48, that in one case 36 months were required, that between 12 and 17 months were required in nine cases. It should not be necessary to point out the public interest in having constitutional questions settled speedily once they are raised, in so far as that can be done consistently with careful judicial consideration.

### III

What were the forms of action used in bringing the question of constitutionality into court in those cases in which the court decided that the statutes were unconstitutional? The following table lists the types of

<i>Type of Action</i>	<i>No. of Cases</i>	<i>Type of Action</i>	<i>No. of Cases</i>
Equity	2	Action to enforce lien	4
Trespass	1	Damages	9
Mandamus	33	Prohibition	2
Debt	17	Action to try title	3
Foreclosure	1	Action to collect insurance	3
Redemption	1	Partition of realty	2
Sale on execution	1	Habeas corpus	6
Cancel tax levy	1	Divorce	1
Injunction	25	Writ of ouster	1
Ejectment	9	Statutory violation	8
Conveyance of land	1	Receivership	1
Eminent domain	34	Liquor law prosecution	1
Polygamy	1	Probate of will	1
Unlawful assembly	1	Election contest	2
Conversion	3	Recovery of money	2
Tax refund	1	Special assessment	1
Obstructing highway	1	Ditch proceeding	1
Stockholder's liability	2	Action to create school district	1
Quo warranto	12	Disbarment	1
Attachment	1		

action, with the number of cases in which each was used. The cases do not fall into exactly the categories that might be expected if the old common law actions were to be the basis of classification. In some instances under

modern codes of procedure, all that can be done is to name the general subject-matter as it was set forth in the bill for relief or the complaint or indictment.

A few points in this list are worthy of notice. Types presenting most cases are quo warranto, eminent domain, debt, mandamus, and injunction. In general, this would tend to emphasize that in this field relatively large numbers in the list of unconstitutional statutes dealt with problems of public officers, property, and business. Habeas corpus does not rank high, suggesting that the number of invalid statutes assailed on the ground that they interfered with personal liberty was relatively small, or that personal liberty was represented in other forms than those historically associated with habeas corpus, and is to be found hidden in ejectment, mandamus, injunction, or quo warranto.

In breaking down the experience with injunction, the cases were arranged by decades, and the results are as follows:

<i>Decade</i>	<i>No. of Cases</i>	<i>Decade</i>	<i>No. of Cases</i>	<i>Decade</i>	<i>No. of Cases</i>	<i>Decade</i>	<i>No. of Cases</i>
1860-69	1	1880-89	3	1900-09	6	1920-29	6
1870-79	1	1890-99	3	1910-19	3	1930-33	2

It is interesting to notice that in the periods when more unconstitutional statutes were being discovered by the bar and bench, the use of injunction was more general. Injunction was as effective in the first decade of the century as in the third. There has been no steady increase of the use of this remedy in Minnesota in this class of cases. Legislation in the state restricting the use of injunction in certain phases of taxation and labor cases may account for some of this, but a breakdown of subject-matter in this connection is interesting. It shows that injunction in Minnesota in cases involving unconstitutional legislation is not limited to any particular class of cases. It is neither the remedy of any particular group of litigants nor the remedy for any particular class of cases. Running through a group of injunction cases, one finds that it has been sought to prevent a change in election dates, to prevent the enforcement of a law governing the wrapping of bread, to prevent the dissolution of a school district, to prevent street improvements, park purchases, diversion of bridge funds, establishment of county offices, special assessments, removal of county seats, tunnel construction, application of special legislation, and elections on bond issues. The interested parties in these instances were very often divided along local lines, rather than along the lines of rich and poor, Republican and Democrat, private citizen and corporate person. In some instances, they represent divisions based upon differences in local areas.

One point does appear rather clearly in reading these injunction cases, and that is that injunction is often used in cases in which feelings run high

on both sides. Visualize, for instance, the local fight over a waterworks project, or that over the moving of a county seat. Similarly, the amount of partisan feeling that can be engendered by an election of a school board at a time and in a manner open to controversy can be realized only by those who have witnessed this type of thing. It is easy in our modern industrial society with large cities to read into such illustrations lines of cleavage which did not actually exist at the time or in the place. A group of business men and the local bankers want the streets paved. The retired farmers who are the bulk of residents of the village are opposed to the improvement. Which group is conservative and which radical?

#### IV

A complete tabulation of the subjects with which invalid statutes have dealt reveals that a few subjects account for a great many statutes. The subjects involving more than 10 statutes are (1) counties, (2) courts, (3) officers, (4) municipal government and municipalities, and (5) taxation. Taxation, with 32 invalid statutes, leads the list. Those subjects about which more than five but less than 10 statutes were declared invalid are (1) appropriations, (2) corporations, (3) crime and punishment, (4) drainage, (5) eminent domain, (6) estates, (7) licenses, (8) mortgages, (9) property, (10) roads and bridges, (11) railroads, schools, and school districts, (12) police power, and (13) persons.

In studying the figures on the subjects with which statutes dealt, it is interesting to notice that the personal liberties emphasized so much in Anglo-American law were disturbed with relative infrequency by the Minnesota legislature, or else if the legislature did disturb them the statutes were not challenged successfully. The subjects with which most litigation in this field dealt were largely (1) taxation, (2) governmental structure and arrangements, and (3) property and the regulation of business. This, of course, does not mean that the older procedural rights and personal rights are not as important now as they formerly were, but it means that instead of jury trial, freedom of speech, search and seizures, the scene has shifted to other areas. This shift is reflected in the foregoing listing of subjects. Classes one and three above do involve private rights, real or fancied, and they represent the new fields of controversy in our society. The increase in governmental functions and the changing relationships between government and business, with their accompanying differences of opinion, are clearly reflected in this classification.

#### V

What are the constitutional obstacles or provisions encountered by legislative enactments in Minnesota? What were the chief constitutional obstacles which the legislature failed to hurdle? Again, to begin with those

involving 10 or more unconstitutional statutes, it appears that the following loom as the most important; (1) obligation of contract, with 11; (2) procedural rules governing the enactment of laws, with 87; (3) due process of law, with 32; (4) federal-state relations, with 11; (5) taxation, with 26; (6) eminent domain, with 10.

Stated in terms of articles and sections, the major obstacles encountered by the Minnesota legislature have been Article I, section 7, due process; Article I, section 11, obligation of contract; Article III, section 1, government; Article I, section 13, eminent domain; Article IV, section 26, laws, procedure and subject (including special and local laws); Article IX, sections 1 and 3, taxation.

Again it is striking to observe to what an extent legislatures have encountered difficulties connected with the structural and procedural arrangements relating to governmental organization and functioning. In this connection, it is somewhat surprising to find federal-state relations having assumed such an important place in the period here under review. Property cases are apparent in obligation of contracts and in some phases of due process, but they are to be found also under the heading of taxation, with respect to both procedure and substance.

## VI

At this juncture, it seemed of interest to raise the question of the extent to which unconstitutional statutes in Minnesota were challenged by corporations. The feeling is common that corporations have been partially responsible for the increase in constitutional litigation, and that they are particularly successful in their litigation in this field. Arranging the cases in which it appeared that a corporation was the plaintiff, the following figures stand out:

<i>Years</i>	<i>Corp. Pl.</i>	<i>Corp. Pl. or Def.</i>	<i>Years</i>	<i>Corp. Pl.</i>	<i>Corp. Pl. or Def.</i>
1860-69	1	2	1900-09	3	6
1870-79	2	4	1910-19	1	4
1880-89	1	5	1920-29	5	8
1890-99	2	10	1930-33	3	4

When, however, cases in which corporations were either party plaintiff or party defendant are added, as they are above, the picture looks somewhat different. Then, the right-hand column of figures that are added tends to show that more cases involved corporations as time went on.

It is, of course, only natural that corporations should appear more frequently as litigants in this field during this period, because they were increasing in number very rapidly. The number of statutes dealing with corporations as such, and with subjects and operations in which corporations were interested, was also increasing rapidly. It is not to be taken as

evidence of a pernicious influence, necessarily, because some of the early attempts in this field were rather blundering.

An analysis of the contents of the statutes involved in the cases to which corporations were parties fails to indicate any particular correlation between the corporations as parties and the subjects with which the statutes dealt. The subjects were of the same variety as were those involved in the cases at large. In a few, but in a surprisingly few, cases did the statutes affect corporations as such. Nor did the statutes often deal with subjects of any particular economic or social significance related to the interests of corporations. The author confesses to a little surprise at this finding, but believes that the figures bear out his conclusion. The data from the other states examined, such as Indiana, confirm the conclusion.

## VII

One of the subjects bulking large in recent legal literature is the objectivity or subjectivity of judges in passing upon constitutional questions. Some have taken the position that, when they sit in constitutional cases, judges are likely to act, not as lawyers, but as laymen. Others maintain that the same general attitudes that characterize the common law judges and their techniques are to be found in operation in this field of litigation as in others. What has the experience of Minnesota been with respect to this issue?

The outstanding fact about decisions in the Minnesota supreme court in constitutional litigation is that most of them are rendered by unanimous vote. Out of a total of 194 cases, a unanimous decision was rendered in 176. The number of cases in which the judges of the supreme court did not vote unanimously is relatively small, perhaps somewhat smaller, proportionately, than in some of the other states. Twenty cases have been tabulated in which one or more judges dissented. In only seven cases was the decision of the court by a bare majority. When these are examined, it appears that in two of them the court was composed of three judges, so that if they did not all agree the decision had to be by a bare majority. In five cases, there were three judges on one side and two on the other. The subjects dealt with in these cases have no common pattern running through them, ranging from courts and county government to commerce and cities.

When all the cases involving dissents are examined and arranged by subjects, it is likewise apparent that it has not been the basic economic or political issues of our history that have divided the judges. One or two instances of this can be found, but the striking thing is that the subjects are of a nondescript character, e.g., licenses, commerce, taxation, hours of work, drainage ditches, elections, counties, cities, and liquor.

One point, however, is worthy of notice. It is that the period of time elapsing between the enactment of the statutes involved and the decisions

in the supreme court was somewhat shorter, on the whole, than in the other cases. This means, doubtless, that there was some point of immediate controversy involved, and that this was brought to a test early. At first glance, this might seem to fit in with the conclusion often drawn in legal literature that the basic economic and political issues are those which divide the courts. But one familiar with this type of litigation will remember that lawyers contest hotly and immediately changes of their own rules of procedure, that neighboring farmers are as likely to fight about laws of drainage as they are to fight with the contractors who are thought to be the major beneficiaries of some of these projects, and that local governmental affairs often create a high pitch of feeling reflected in immediate resort to the courts.

The judges of the Minnesota supreme court have perhaps divided less often in their opinions than have those of many other states. The reasons for this unanimity of the court in the great majority of its opinions may be several. The tradition of electing judges to succeed themselves doubtless has played its part, giving a continuity of membership that is not found in all state courts. The introduction of the nonpartisan ballot for judges during the past generation may have aided to some extent, but the tradition was established earlier than that movement. The active participation of the bar in nominating and electing judges may have resulted in focusing attention upon lawyer-like qualities so that the members of the court have thought as judges rather than as laymen upon constitutional questions. The bar may have been responsible to some extent by presenting constitutional issues to the court in sufficiently clear fashion to make it relatively easy for the judges to reach their decisions.

It is obvious that in Minnesota the problem of decisions by a bare majority has not been presented in serious form. The generalization seems well founded that in Minnesota the judges think surprisingly alike on constitutional matters. This is not to suggest that every time a united front is presented each and every one of the judges agrees precisely with each and every other judge. But it does mean that, even though there be differences, the judges in most cases do not consider them of sufficient importance to justify a dissent. There have been dissents, but there have not been so very many of them. Minnesota judges, it may be said, do not dissent lightly. This is as it should be.

#### VIII

The length of judicial opinions is a subject that may seem at first thought to have little significance, but it may bear a direct relationship to the value of opinions in guiding the bar in its use of precedents. If an opinion is too long because the judge writing it was confused in his own mind, and his brethren were lenient with him, the law suffers. An opinion

may be so brief that it is almost impossible to tell what principle of law is to be deduced from the decision. In general, it is the quality of the opinion that is primary; but it is not to be overlooked that the length of an opinion may be a fairly good index to its quality. There are few very long judicial opinions that are fine, so far as the experience of this reader is any basis for judgment.

The average length of majority opinions in the Minnesota cases is just under six pages. In 156 cases, the opinions were 10 pages in length or less. In only 11 cases were they more than 12 pages long. The tradition of the Minnesota court may be said, on the basis of this experience, to be to write relatively short opinions—opinions of about the right length. They should not be lengthened. If anything, they should be shortened. This author, on the basis of his reading, is inclined to appraise the quality of constitutional opinions in Minnesota as above the average, taken as a group.

## IX

The Minnesota decisions were not, of course, rendered in the first instance by the highest court of the state. The trial courts are the ones first faced, in most instances, with the question of the constitutionality of a legislative act. How reliable are these courts in their judgment of the validity of a statute, using their anticipated conformity with the supreme court as the test of their reliability?

About one-third of all the Minnesota cases studied in which the supreme court held the statute to be unconstitutional were held by the district courts to be constitutional. This means that the trial courts are more likely to hold statutes constitutional than is the supreme court; and this is as it should be. The Minnesota trial courts are, however, somewhat more forthright in their exercise of the power to declare statutes invalid than those of Indiana and some other states, where in some instances half of the statutes are held valid which later are declared invalid by the highest court of the state.

The Minnesota bench, in the trial courts, may have a greater stability than that of some of the other states, because of the combination of non-partisan elections and the tradition of reëlecting the sitting judge in the district court, just as in the supreme court. The endorsement of the bar likewise assists in making more certain that the trial judge is not only a type of person with whom the bar likes to work, but that he is a competent lawyer before whom they are satisfied to present their legal issues. The number of reversals, while smaller than in some of the states studied, is nevertheless large enough to make it necessary to keep the doors open to the highest court in constitutional cases. An analysis of the subjects with which the statutes dealt in those cases in which the highest court reversed

the lower court on this point does not show that there is any particular correlation between reversals and any type of subject. The subjects involved range over the entire scope involved in the total group of cases.

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*Section 13:*

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OLIVER P. FIELD.

*Indiana University.*

**Fourth Edition of the Model State Constitution.** After two years of effort, the Committee on State Government of the National Municipal League has completed its work on the new fourth edition of the Model State Constitution. This constitution was originally published in 1921, and revisions were made in 1928 and 1933. The form of the constitution has been improved, and the text itself subjected to a thoroughgoing revision, resulting in many important changes. Whereas the third edition had ninety-eight sections, the new one has 116 sections grouped under thirteen articles, dealing respectively with the bill of rights, suffrage and elections, the legislature, initiative and referendum, the executive, the judiciary, finance, local government, the civil service, public welfare, intergovernmental relations, constitutional revision, and the schedule. The explanatory comments have been thoroughly revised and rewritten.

The Committee was mindful of the fact that the states differ greatly in size, wealth, and population, as well as in governmental traditions and practice, and that provisions on many subjects may properly vary in accordance with these factors. It tried to look ahead, to plan for the future, without losing sight of the practical. Essential features that have characterized earlier editions of the document have all been retained, but in some cases with modifications made necessary by recent developments. In the bill of rights, new sections have been added on legal rights and on the right to organize, and another designed to prevent raids upon the public treasury by interest groups. The provisions on suffrage and elections have been entirely redrafted, in the light of recent experience as shown by scientific studies of electoral procedure.

With regard to the legislature, the Committee continues to believe that "a single body, chosen by proportional representation and not too large in number, will be at once more representative and efficient than the present two-chamber system." It recognizes, however, that the unicameral legislature will probably not be adopted in many states in the near future, and that in fact we have no assurance that this form would prove suitable in some of the larger and more populous states. The major changes affecting the legislature are three in number: (1) the legislative process is made a continuous one; (2) the legislative council is strengthened as an agency of the legislature; and (3), emphasis is given to the improvement of committee procedure. The Committee was of the opinion that, from the point of view of protecting and strengthening the machinery of the democratic process, nothing is more important than the improvement of legislative procedure. Although the provisions on the initiative and referendum in the earlier edition were generally satisfactory, some changes were thought desirable. These were designed to make the provisions more specific, to eliminate confusion or conflict, and to include some new restrictions and safeguards.

The new edition continues to stand firmly for the principle of concentra-

tion of administrative responsibility in a single popularly elected executive. Recognizing the limitations imposed by the "span of control," the effort has been made to restrict the number of departments without imposing unreasonable or improper limitations upon the power of the legislature to make such changes in the administrative set-up as may from time to time seem desirable. Formal recognition is given to the need for management in a new provision for an administrative manager of state affairs and for such administrative aides as may be required to assist the governor in his task of administrative supervision. For the present, it is suggested that these might include a financial assistant, a personnel assistant, a planning assistant, an assistant in the field of research and statistics, and an assistant in charge of public reporting and information—although, in keeping with the Committee's policy of excluding the names of particular administrative officers from the constitution, these positions are not mentioned by name. The governor is to be elected, still for a four-year term, in alternate odd-numbered years. To insure the focusing of public attention on the actions of the governor, it is provided that executive orders shall be published before they become law—a safeguard on the administrative process which has been generally overlooked in state government.

Unification is the keynote of the judiciary article of the new edition. It provides for a general court of justice to perform all of the trial and appellate judicial functions of the state. The chief justice is made the executive head of the judicial department and is responsible for its efficient organization and smooth functioning. He is assisted by a judicial council representing all parts of the judicial system. Since the chief justice and the judicial council would provide a continuous supervision of the judicial agencies, they can be freed from frequent sporadic meddling by political officers. Thus a real independence of the judiciary is secured—an aim long lauded as an ideal, only to be flouted in practice. The organization is flexible; the council is vested with the rule-making power. The chief justice is popularly elected; he selects the judges, from a panel of names recommended to him by the council, for a term of twelve years. Each judge is subject to an automatic recall election at the expiration of one-third of this term.

The article on finance is intended to include all provisions relative to state finance and financial procedure that the Committee deemed it necessary to write into the constitution. These provisions related to general taxing and borrowing powers, debt limitations, budgeting, expenditure control, purchasing methods, post-auditing, and excess condemnation. Such items as accounting procedures are not covered; their necessity is taken for granted, and it is assumed that they may be adequately provided for by statute. The provisions of this article seek to make effective the principles of administrative organization established in the article on the executive. In conformity with the trend of recent years, the financial

functions would probably be integrated in a department of finance. The governor is made responsible for submitting to the legislature a comprehensive budget. He is given power to require estimates and other information from all spending agencies of the government; the procedure to be followed is outlined, and the resulting appropriation bill is given priority in the legislature. The governor is given authority to reduce expenditures under appropriations, when in his judgment, it is necessary or desirable, and through allotments or otherwise, to control the rate at which appropriations are expended during the fiscal year. There is a provision to encourage centralized and cooperative purchasing, and for an effective post-audit.

The article on local government, which continues to emphasize the principle of home rule, has not been greatly changed. The provisions on civil service were drafted at a joint meeting of committees representing the National Municipal League, the Civil Service Assembly of the United States and Canada, and the National Civil Service Reform League. The effort was made to include the entire civil service of the state and its political subdivisions, including legislative and judicial employees as well as those in the executive branch of the government. A department is made responsible for the classification of positions, the establishment of salary ranges, the establishment of rosters, and the general administration of the personnel functions. Counties and municipalities which prefer to operate their own personnel agencies may do so, under state supervision; otherwise they are subject to the jurisdiction of the department.

The provisions on public welfare, which have been considerably revised, seek to outline a general framework of constitutional powers which will guarantee to the state ample authority to establish and maintain an effective program of public welfare services in the fields of education, health, public assistance, inspection of welfare institutions, housing, and conservation. In order to prevent the possibly unfortunate effects of a narrow judicial construction of these provisions, it is specifically provided that "the enumeration in this article of specified functions shall not be construed as a limitation upon the powers of the state government."

The article on intergovernmental relations is largely new, and grows out of the experience of recent years. Its provisions seek to eliminate constitutional barriers to federal-state and interstate cooperation, and to encourage the consolidation and cooperation of local units. The provisions governing the legislative proposal of constitutional amendments have been revised to conform to the idea of continuous legislative activity. The people are given the right to vote on the question of a constitutional convention at least once in twenty years, and the provisions with regard to the number and choice of convention delegates have been redrawn. It is provided that the provisions affecting constitutional amendment and



revision shall be self-executing, but that the legislature may adopt legislation to facilitate their operation. A schedule has been added to provide for the transition from the old constitution to the new.

In view of the long period of constitutional stagnation that has afflicted the American states, it is to be hoped that the publication of this new edition of the Model State Constitution will stimulate interest and activity in this field. There are hopeful signs in the recent conventions in New York and New Hampshire, and the current interest in constitutional conventions in New Jersey and Missouri.

W. BROOKE GRAVES.

*Temple University.*

**Organization of the Executive Branch of the National Government of the United States: Changes between April 1 and July 15, 1941.**<sup>1</sup> As in previous lists, mention is here confined generally to units specifically authorized by law or established by the President by executive order or reorganization plans under general authority vested in him. Changes in units created by heads of departments or independent establishments are excluded unless of major importance.

*Bituminous Coal Division, Department of the Interior.* Functions continued until April 26, 1943, by Public Law 34, 77th Congress, approved April 11, 1941. This unit was established as the Bituminous Coal Commission by the act of April 26, 1937 (50 Stat. L. 72), which expired by limitation on April 26, 1943. The Commission was abolished by Reorganization Plan No. 2, effective July 1, 1939, which transferred its functions to the Secretary of the Interior, who in turn established the Bituminous Coal Division.

*Board of Legal Examiners of the Civil Service Commission.* Appointed by the President on June 18, 1941, in accordance with the provisions of Executive Order 8743 of April 23, 1941, to determine the manner by which the Civil Service Commission shall establish registers for the appointment of attorneys, and to promote the development of a merit system for the recruitment, selection, promotion, and transfer of attorneys in the classified civil service. The Board consists of the Solicitor General of the United States, the Principal Legal Examiner of the Civil Service Commission, and the following appointed members: two from the law-teaching profession, two from attorneys in private practice, and five from the chief law officers of the executive agencies.

*Committee on Fair Employment Practice.* Created in Office of Production Management by Executive Order 8802 of June 25, 1941, to receive and

<sup>1</sup> Articles of this character appearing in the REVIEW prior to 1940 are listed on page 1044 of the issue for December, 1939. Later articles have appeared in the issues for June and October, 1940, and February and June, 1941.

investigate complaints of discrimination in employment by reason of race, creed, color, or national origin. The Committee consists of a chairman and four other members to be appointed by the President. Executive Order 8823 of July 18, 1941, provided for an additional member. The order provides that all government agencies concerned with defense production shall take special measures to prevent discrimination, and that all contracting agencies shall include in all defense contracts a provision obligating the contractor not to discriminate against any worker because of race, creed, color, or national origin. The Committee is directed to recommend to the several agencies and to the President all measures deemed necessary or proper to effectuate the order.

*Department of Commerce Field Service.* Established by the Secretary of Commerce by order of May 26, 1941, by consolidation of the field offices of the Bureau of the Census and the Bureau of Foreign and Domestic Commerce. The plan provides for 12 regional offices—one in each Federal Reserve District and 19 district offices in other cities. The manager of each regional office will supervise the district offices in his territory. General supervision will be exercised by the Department of Commerce Field Service Office in Washington.

*Disaster Loan Corporation.* Functions extended by Public Law 108, 77th Congress, approved June 10, 1941, to include floods and other catastrophes that may occur prior to January 22, 1947.

*Division of Defense Aid Reports.* Established in Office of Emergency Management by Executive Order 8751 of May 2, 1941, to provide a central channel for clearance of transactions and reports, to maintain a system of records and summary accounts, to prepare reports for the President, and to serve as a clearing house of information. By military order of May 6, 1941, an officer of the army was designated as executive officer of the division, as the functions assigned to it "are essentially of a military character."

*Division of Power, Department of the Interior.* Created by the Secretary of the Interior on April 18, 1941, to have supervision over all functions in connection with electric power matters in the Department of the Interior and to coördinate power policies and activities within the Department and with other agencies dealing with power.

*Electric Home and Farm Authority.* Functions continued to January 22, 1947 by Public Law 108, 77th Congress, approved June 10, 1941.

*Maritime Labor Board.* The life of this board expired by limitation on June 23, 1941, but Public Law 124, 77th Congress, approved June 23, 1941, extended it to June 23, 1942. The duties of the board as regards mediation and arbitration are repealed, but it may continue to act as mediator if its mediation has been requested and actively undertaken prior to June 23, 1941.

*National Archives Trust Fund Board.* Created by Public Law 161, 77th Congress, approved July 9, 1941, to receive gifts for the National Archives and to administer the fund derived therefrom. The Board consists of the Archivist, the chairman of the House Library Committee, and the chairman of the Senate Library Committee.

*Office of Agricultural Defense Relations, Department of Agriculture.* Ordered established by the President on May 5, 1941, in a letter to the Secretary of Agriculture to succeed the Division of Agriculture of the National Defense Advisory Commission. The duties of the office are to serve as a clearing house for agricultural needs as they relate to defense, to facilitate the coördination of defense operations carried on by the Department of Agriculture, to assist the Secretary in maintaining effective channels of communication between the Department of Agriculture and the several defense agencies with respect to problems of procurement, production, priorities, price, and other activities involving agricultural considerations, and to assist in the planning of adjustments in the agricultural program in order to meet defense needs.

*Office of Bituminous Coal Consumers' Counsel.* Established as an independent establishment by Public Law 34, approved April 11, 1941. The Bituminous Coal Act of 1937 (50 Stat. L. 72) established in the Department of the Interior the Office of Consumers' Counsel of the National Bituminous Coal Commission. By Reorganization Plan No. 2, effective July 1, 1939, the office was abolished and its functions were transferred to the Office of the Solicitor of the Interior Department. On July 7, 1939, the Secretary of the Interior established the Consumers' Counsel Division in the office of the Solicitor. The act of April 11, 1941, confers on the Office of Bituminous Coal Consumers' Counsel all functions conferred on the Office of Consumers' Counsel of the National Bituminous Coal Commission as specified in the act of April 26, 1937 (50 Stat. L. 74).

*Office of Coördinator of Information.* The position of Coördinator of Information was established by the President July 11, 1941, "by virtue of the authority vested in [him] me as President of the United States, and as Commander in Chief of the Army and Navy of the United States," to collect and analyze information on national security, and to make such information available to the President and such agencies as the President may determine.

*Office of Civilian Defense.* Established in the Office of Emergency Management of the Executive Office of the President by Executive Order 8757 of May 20, 1941. The duties of this unit are to coördinate, plan, and promote activities relating to the protection of life and property in the event of emergency. The Office is headed by a Director, who serves without compensation. Within the unit are a Board for Civilian Protection and a Volunteer Participation Committee, to function as advisory bodies and to

serve without compensation. The Board for Civilian Protection consists of the Director of Civilian Defense as chairman, one representative each from the War, Navy, and Justice Departments and the Federal Security Agency, and such others as the President may from time to time determine; the following organizations are also to be invited to designate a member: the Council of State Governments, the American Municipal Association, and the United States Conference of Mayors. By Executive Order 8822 of July 16, 1941, the American National Red Cross was added to the organizations authorized to designate a representative on the Board. The Volunteer Participation Committee is to consist of the Director of Civilian Defense as chairman, and representatives of the "various regions and interests of the nation," to be appointed by the President. The number of representatives was fixed at 20 by Executive Order 8757, but was increased to 45 by Executive Order 8799 of June 20, 1941.

*Office of Government Reports.* Annual appropriations not exceeding \$1,500,000 authorized by Public Law 107, 77th Congress, approved June 9, 1941. While the act of June 9 does not specifically establish this unit, it does so in effect by authorizing annual appropriations. Originally, this office was the National Emergency Council, created by Executive Order 6433A of November 17, 1933, and abolished by Reorganization Plan No. 2, effective July 1, 1939, which transferred part of its functions to the Executive Office of the President. By Executive Order 8248 of September 8, 1939, the Office of Government Reports was established in the Executive Office of the President; to it were assigned the functions of the National Emergency Council that had been transferred to the Executive Office. Heretofore the funds for this office have been provided by allocations from emergency relief acts.

*Office of Petroleum Coördinator for National Defense.* Created by the President May 28, 1941, in a letter to the Secretary of the Interior, who is designated as Coördinator. The duties are to obtain information regarding needs for petroleum and petroleum products, and to make recommendations to appropriate federal agencies as to action which is necessary or desirable to insure the maintenance of a ready and adequate supply of petroleum and petroleum products.

*Office of Price Administration and Civilian Supply.* Established in the Office of Emergency Management of the Executive Office of the President by Executive Order 8734 of April 11, 1941, and to be headed by an Administrator appointed by the President. The duties of the officer are to take necessary steps to prevent price spiraling, to prevent speculative accumulation, to stimulate production of commodities for civilian use, to provide for equitable distribution among competing civilian demands, to make studies of civilian requirements, to determine maximum prices, and to recommend to the President the exercise of the authority vested in him by existing law.

There is also created in the Office of Price Administration and Civilian Supply a Price Administration Committee consisting of the Administrator as chairman, the Secretary of the Treasury, the Secretary of Agriculture, the Federal Loan Administrator, the chairman of the Tariff Commission, the chairman of the Federal Trade Commission, the Director-General and the Associate Director-General of the Office of Production Management, or such alternate as each of the above listed may designate, and such other members as the President may subsequently appoint. The Commission shall from time to time, upon request of the Administrator, make findings and submit recommendations regarding maximum prices.

*Office of Scientific Research and Development.* Established in the Office of Emergency Management of the Executive Office of the President by Executive Order 8807 of June 28, 1941, to advise the President with regard to the status of scientific and medical research relating to national defense, to serve as a center for the mobilization of scientific personnel, to coördinate experimental and other scientific and medical research, to develop plans for the conduct of scientific research, to initiate and support scientific research on mechanisms and devices of warfare and on medical problems affecting the national defense, to promote such scientific and medical research as may be requested by any country whose defense the President deems vital to the defense of the United States under the terms of the act of March 11, 1941 (Public Law 11, 77th Congress), and to serve as the central liaison office for such work. At the head of the office is a director appointed by the President.

Within the Office of Research and Development are the following advisory units:

(1) National Defense Research Committee, consisting of a chairman and three other members appointed by the President, the President of the National Academy of Sciences, the Commissioner of Patents, an officer of the Army designated by the Secretary of War, an officer of the Navy designated by the Secretary of the Navy, and such other members as the President may subsequently appoint. This Committee is to recommend to the Director the need for and character of contracts to be made with universities, research institutes, and industrial laboratories. The National Defense Research Committee established by the Council of National Defense on June 27, 1940, is abolished.

(2) Committee on Medical Research, consisting of a chairman and three members to be appointed by the President, one member each from the medical staffs of the Army, the Navy, and the Public Health Service, to be designated respectively by the Secretary of War, the Secretary of the Navy, and the Administrator of the Federal Security Agency. This committee shall advise the Director in regard to the mobilization of medical and scientific personnel, and shall recommend the need for and character

of contracts to be made with universities, hospitals, and other agencies conducting medical research activities. The duties pertaining to medical research of the Health and Medical Committee created by the Council of National Defense on December 28, 1940, are transferred to the Office of Scientific Research and Development.

(3) An Advisory Council consisting of the Director as chairman, the chairman of the National Advisory Committee for Aeronautics, the chairman of the National Defense Research Committee, the chairman of the Committee on Medical Research, and one representative each from the Army and the Navy to be designated by the Secretaries of War and Navy. The Council shall advise and assist the Director with respect to the coordination of research activities carried on by private and governmental groups.

L. F. SCHMECKEBIER.

*The Brookings Institution.*

## JUDICIAL AFFAIRS

**The Judicial Council as an Aid to the Administration of Justice.**<sup>1</sup> Procedure is the most difficult and the least satisfactory part of the law. It is the delay, expense, and uncertainty of litigation that has always aroused popular complaint; and these are mostly matters of procedure.

Our substantive law, regulating rights and duties, is intricate enough, but on the whole it has been worked out by the courts and laid down in statutes in a way which seems to meet the general needs of society. The principles of property law, contracts, torts, trusts, agency, partnership, corporations, negotiable instruments, sales, and of all the other titles in the substantive field, are quite acceptable to the public. But when the machinery of the courts is invoked to administer these principles, interminable trouble results. Process must be issued and served to bring persons and property under the jurisdiction of the court, the parties must file their claims and defenses, objections must be heard and amendments made, evidence must be collected by various devices. When the case is called for trial, the jury must be empanelled, opening statements must be made to the jury, proof must be introduced, the jury must be addressed by counsel and instructed by the court, and the verdict must be taken, after which motions for a new trial are likely to be made on account of alleged errors occurring in the course of the trial. After the judgment is rendered, proceedings for appeal are in order, requiring the careful preparation of a record which will bring before the reviewing court all the matters on which a reversal is claimed, the filing of briefs, and arguments to the court. All these proceedings involve an indefinite maximum and an irreducible minimum of technical requirements, and constitute the basis for most of the complaints against the administration of justice.

The chief problem of the judicial branch of the government is to make this intricate mechanism operate with the least possible friction. This requires an adequate system of procedural rules. The earliest rules of procedure were developed by the courts as a mere by-product of litigation. When a matter came before the court for the first time, it had to be dealt with in some way, and it was natural for the method employed in that case to be followed in succeeding cases. But the difficulty with this system was that the doctrine of *stare decisis*, which made every decision operate as a binding precedent, produced a rigidity in the rules which greatly diminished their effectiveness.

To introduce into the rules of procedure sufficient flexibility to enable them to meet the changing needs of society, legislatures undertook the

<sup>1</sup> Both this article and the following one originated as papers presented in the round table on judicial administration at the Chicago meeting of the American Political Science Association, Dec. 30, 1940.

task of devising procedural codes. But this was not wholly successful, for while legislative bodies are not at all bound by precedents, because the very reason for their existence is the admitted need for constant changes in the law, yet they are largely made up of laymen who do not understand legal procedure, and their attention is diverted by the pressure of other matters having a stronger social or political appeal. If the legislature is to function effectively in the somewhat dry and technical field of legal procedure, not only must it obtain technical advice from those having experience and skill in the administration of justice, but there must also be some sort of organized sponsorship for proposed reforms to secure for them a favorable place on the legislative agenda.

As a means of escape from the infirmities of both of the foregoing methods of regulating procedure, a third plan has been strongly advocated. This is regulation by rules of court. It is obvious that the judges are entirely familiar with the problems involved and are more directly interested than the legislature in the successful operation of the courts. This would seem, therefore, to be an ideal solution of the problem.

But experience has shown that even this plan has fatal weaknesses. The judges are too much occupied with the pressing demands of the cases which come before them. This is their principal responsibility and their primary interest. If clothed with rule-making power, they simply do not exercise it.

Furthermore, judges are normally disinclined to change the rules under which they operate their courts. The judiciary is the element which conserves; it does not create. It follows precedent. Its primary function is to administer the law as it is. The courts are the stabilizing factor in our civilization, and we want them to remain so. It is their task to maintain and protect our social organization. To point out that the court lacks incentive to develop new rules of procedure, because of a judicial attitude which accepts the established order, reflects no criticism upon the court. We need exactly that kind of a judicial institution. But it does not follow that the court is the best qualified agency to carry out procedural reforms.

Furthermore, the courts are fully occupied with other duties which are always urgent. Their main function is the strictly judicial one of deciding cases and determining the law, and that function is of paramount importance. Cases press upon the court and occupy substantially all the time and attention of the judges. They have no opportunity for research in the field of procedure. Besides, no non-competitive organization will ever voluntarily change its routine. Why should it? It gets familiar with its own methods, there is no pressure of competition, it does not have to change in order to perform its functions. Why should it not be content to continue in its accustomed way? Perhaps it should; at least it usually does.



Here are some actual results of American grants of rule-making power: *United States Supreme Court*. Given power to make equity rules in 1792. Nothing was done for thirty years, when the first rules were drawn. Twenty years later, a few amendments were made and nothing was done thereafter for seventy years.

*Virginia Supreme Court of Appeals*. Given rule-making power in 1916, the act providing that the court "shall" make rules of procedure. The court did nothing, and two years later the act was amended by changing "shall" to "may." Still nothing happened. In 1928, another statute was passed with the same purpose in view, as a result of which the court adopted one rule.

*Alabama Supreme Court*. Was given rule-making power in 1913. Nothing was ever done with it.

*New Jersey Supreme Court*. Power was conferred in 1912 to make rules of court, but it has been practically unused.

*England* has had a similar experience. The English Civil Procedure Act of 1833 was the first effort during the last century to delegate to the courts the task of regulating judicial procedure. It resulted in the famous Hillery Rules of 1834. But they were not a success. They did not go far enough. The judges did not understand what was wanted. Reform was outside of their normal field of activity. They lacked creative imagination. They were not in touch either with the clients or with the public, and the rules they produced were not satisfactory.

Years went by with increasing discontent, and after another half-century of struggle came the judicature acts of 1873 and 1875. What did Parliament do? Did it pass a brief enabling act and say to the courts: "Draw up the rules?" On the contrary, Parliament itself drew up the rules. It passed the statute to which was attached a complete schedule of rules of practice. It did, however, give to the judges the power to change that schedule at any time they saw fit. This was a delegation to the court of full control over the rules, and on paper it provided a flexible scheme for adjusting procedure from time to time as the public need required.

But the plan was a failure. Nothing was done by the judges. In 1913, a royal commission was appointed to see what was wrong. Many witnesses were examined, including judges and lawyers and business men. In its report, after making a large number of specific suggestions for changes in organization of courts, their methods of administration and their procedure, the Commission said:

"The question may be asked why the delays in the administration of justice which have been so long complained of could not have been remedied by the adoption of these proposals by the responsible authorities through the procedure already provided without recourse to a Royal Com-

mission. We regret to say that we do not think a satisfactory answer can be given to this question.

"Section 75 of the Judicature Act, 1873, enacts that a Council of the Judges of the Supreme Court, of which due notice shall be given to all the said judges, shall assemble once at least in every year on such day or days as shall be fixed by the Lord Chancellor with the concurrence of the Lord Chief Justice of England, for the purpose of considering the operations of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and inquiring and examining into any defects which may appear to exist in the system of procedure of the administration of the law in the said High Court of Justice or the said Court of Appeal or in any other court . . . and they shall report annually to one of His Majesty's principal Secretaries of State.

"It appears that successive Lord Chancellors, commencing with Lord Selbourne and continuing to the present day, have only taken the initiative imposed on them by this section of fixing a day for such a meeting on three occasions in thirty-seven years. Lord Loreburn told us that in seven years he had summoned one meeting, but considered them useless. The Lord Chancellor said 'he could conceive no more futile proceeding. We should meet and it would come to nothing.' We feel that the view held by the Lord Chancellor and so many of his predecessors as to the inutility of such meetings is probably well founded; but assuming that to be so, we cannot but regret that they have not asked Parliament to relieve them from the duty imposed upon them by statute and to substitute some other methods of considering from time to time and securing any necessary reform in the administration of justice."

In view of the inability of both the legislature and the courts to serve as satisfactory agencies for the regulation of legal procedure, the judicial council was brought forward as an auxiliary agency which might formulate suitable rules of procedure and present them to the legislature or to the court for approval and adoption.

In order to serve this purpose successfully, the judicial council would, of course, have to have all the qualifications essential for the regulation of legal procedure. What are they? I should list them as follows: (1) Adequate technical information must be available. (2) There must be an inherent incentive to act. (3) There must be no domination by special groups which will interfere with an impartial administration of justice for the benefit of all interests concerned. (4) There must be the ability and opportunity to organize and direct research. Can the judicial council meet all of these tests?

*First Requisite: Adequate Technical Information.* This requirement would offer no difficulty whatever. The personnel of such a commission or

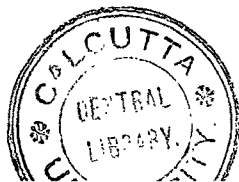
council could be so selected as to draw upon the technical resources of all the important courts as well as the practicing bar. If so selected, it would be better equipped with technical information than the legislature, because the legislature is made up very largely of laymen; and it would be better equipped than any court, because the court not only includes no members of the bar but consists entirely of either appellate court judges alone or of trial court judges alone. This results in a restricted view—the view of the bench as distinguished from that of the entire profession, and of a single court as distinguished from that of the entire judiciary.

*Second Requisite: Inherent Incentive to Act.* Here again, there would seem to be no difficulty. As a rule-making body, such a committee or council would operate with no inhibitions against change. Its entire function would be to modify and improve the practice of the courts. It would have a task similar to that of the legislature itself, but in a more limited field. Its energies would not be scattered, but would be directed to a single purpose—the improvement of the administration of justice. No other interests would divert its attention, and no other duties would interfere with the effectiveness of its work. As a public body charged with responsibility for designing machinery for the efficient operation of the courts, the sole justification for its existence would be the success which it might attain in improving court procedure. Constantly subject to public criticism, it could hardly fail to make every effort to fulfill the single purpose for which it was created.

*Third Requisite: Ability to Represent Impartially All Interests Concerned.* The several interests involved are the trial court, the reviewing court, the bar, the litigants, and the taxpaying public. Each one of these components in the problem of judicial administration has special needs and naturally seeks special advantages, which are often inconsistent with the needs and advantages of others. Long court sessions are burdensome to the judges, but they are probably of advantage to lawyers, litigants, and public. Technicalities of procedure may seem to serve the purposes of lawyers, but they make the courts less serviceable to litigants. Juries relieve trial courts of responsibility for the decision of facts, but they cost the public a good deal of money.

The trial judge in England is required to take notes of the trial, showing the entire substance of the testimony, and an appeal can be taken upon the judge's notes alone. This makes a small record of five or six pages, in cases where we would have a record of one or two hundred. It places a burden upon trial judges, but it is of great benefit both to litigants, by saving an enormous amount of expense, and to appellate judges, by reducing the size of the records they must read.

There are similar conflicts of interest in connection with the printing of records on appeal. Appellate judges would rather read print than type-



writing. Parties would rather pay for a typed record because it is cheaper. In England, they never print their records on appeal; they all go up in typewritten form. Printing is required only for the House of Lords. Printed records are against the interests of litigants and in the interest of appellate courts. It is said that printing bills for records and briefs in New York State run to a million and a half dollars a year.

All rules for simplifying appeals are advantageous to litigants and lawyers, but are against the interest both of trial judges, because they lead to more reversals, and of appellate judges, because they bring up more cases.

The auxiliary commission now being considered could, by a proper selection of its personnel be so constituted as specifically to represent the interests of all the trial courts, the appellate courts, and the bar, and in a more general way to represent the litigants and the public. It would contain its quota of lawyers; and lawyers are in touch with clients, while judges are not. Being in touch with their clients, lawyers are in a far better position than the judges to understand the public attitude toward the administration of justice. The rule-making agency might very well have lay members. English commissions for investigating the courts and suggesting improvements often consist largely of laymen. The lay members will probably be fully as valuable as the professional members of the council.

*Fourth Requisite: Ability and Opportunity to Organize and Direct Research.* Problems found in the field of judicial procedure are exceedingly difficult. They call for both statistical and observational studies of litigation in all its phases, and an extensive comparative review of the experience of other jurisdictions. Without an adequate organization for such research, under a highly expert direction and control, proposals for improvements in procedure would lack substantial foundation. Obviously, courts have no time, energy, or inclination for procedural research. But an auxiliary commission, working in coöperation with them, would be an ideal agency for such a task. Its personnel would be chosen on the basis of interest in such work, and the continuity of its existence and its activity would make possible the collection of adequate statistics and the carrying out of extensive observations.

A more or less complete recognition of the necessity for providing these requisites is apparent in all of the statutes by which the various judicial councils were created. Most of them were modelled on the general plan of the Massachusetts Act, adopted in 1924.

The jurisdiction of the judicial council is ordinarily limited to the field of judicial procedure, and does not include the substantive law. The council is usually required to make a continuous study of the organization, rules, and methods of procedure and practice of the judicial system of the state, the work accomplished, and the results produced by that system and its various parts. It is under a duty to file an annual report in which it

makes such recommendations as it believes desirable both for legislation and for such rules as the courts are competent to make.

To facilitate its studies and to enable it to build up a continuing series of statistical records, it is common to require the clerks and other officers of the courts to make to the council from time to time such reports as the council shall prescribe. Under such authority, given in express terms or implied from other language in the statute, twelve state judicial councils are collecting and publishing very illuminating statistics regarding the work of their courts. They show, among other things, the distribution of the load of judicial business among the different districts and upon the various judges, thereby facilitating equalization by temporary shifting of judges and by permanent rearrangement of districts. They show the comparative volume of different types of cases, thereby indicating the relative aggregate importance of reforms specially applicable to certain kinds of litigation. They show the speed with which cases are disposed of, the effect of various procedural devices in facilitating judicial processes and eliminating delays, the comparative results obtained in cases tried with and without juries, the volume of appeals from various courts and in various types of cases, and many other items of great importance in appraising the efficiency of the judicial system.

As a means for giving the judicial council additional facilities for research, a number of statutes include in the council a member of the state law school, who is in a position to take an active part in the research program of the council.

The personnel of the council is designed to represent various groups concerned with the administration of justice. Thus it is very common for the judicial council to include judges of different courts, both trial and appellate, and several practicing lawyers; and many councils add the attorney-general, representative members of the legislature, and laymen, as well as a member of a law school faculty. But the size of the council is usually limited to less than a dozen, so that it can function effectively.

The financial support for judicial councils given by the state has usually been quite inadequate. Eight of the councils receive no appropriation whatever. Five receive \$1,000 or less. Most of the others receive from \$1,500 to \$2,500. New York appropriated \$15,000 last year, and \$30,000 for the current year, which, with reappropriations of unexpended balances, gave its judicial council the best financial support of any in the United States. After its organization in 1934, the New York judicial council received \$50,000 a year for two years, and thereafter \$40,000 a year for three years. But it was found that it could not profitably use so much, and the reduction was made with the approval of the council itself.

The character and extent of the work done by the various judicial councils differ greatly. In addition to collecting judicial statistics, some, like

those of Massachusetts and New York, have pursued the policy of preparing specific legislation embodying the reforms which they wish to accomplish, and recommending its passage by the legislature. Others, like that of Michigan, have confined their activities to making very extensive research studies in various important fields of judicial administration. These have been published and widely circulated, not only locally but throughout the country, so that interested persons in other states may have the benefit of the information which they contain. For example, the first annual report of the judicial council of Michigan, containing the first complete study of American procedure for condemnation of land, has been in constant demand by United States district attorneys all over the United States in connection with government projects involving condemnation.

The aggregate contribution of American judicial councils to the study of judicial procedure has been large. Almost every phase of administration has been dealt with, including bar organization and admission to the bar, appellate procedure, arbitration, attachment and garnishment, courts and court organization, criminal investigation and criminal procedure, discovery, divorce, evidence, judges, justices of the peace, motor vehicle cases, pleading and practice, probate procedure, receivers, venue, verdicts, and witnesses. The 1940 handbook of the National Conference of Judicial Councils gives an amazingly extensive bibliography of material bearing on the administration of justice found in the reports of judicial councils.

The organization just referred to, the National Conference of Judicial Councils, was proposed at the meeting of the American Bar Association at Memphis in 1929 by members of various state judicial councils, and it was formally inaugurated the next year at Chicago. Its purpose was to serve as a forum of discussion and a clearing house of information for the rapidly multiplying state councils. It has been actively associated with the Judicial Section of the American Bar Association, holding joint annual meetings with that organization.

At the present time, the National Conference, with the aid of funds granted by the Carnegie Corporation of New York, is engaged in publishing a series of books on the administration of justice. The first, *Criminal Appeals in America*, by Professor Lester Orfield, of the Law School of the University of Nebraska, and the second, *Organization of Courts*, by Dean Roscoe Pound, of the Harvard Law School, have already appeared. The third, *Appellate Procedure in Civil Cases*, by Dean Pound, is now in preparation. Others will follow.

The actual results accomplished by the judicial councils in improving the administration of justice are difficult to estimate. The publicity given to the work of the courts through the continuous publication of judicial statistics has undoubtedly given court officers a keener interest in the effi-

cient performance of their duties. Facts disclosed by these statistics have made it possible to identify many weaknesses in the operation of the system and to provide corrective remedies. The amount of actual legislation directly obtained through the efforts of judicial councils varies widely in the different states. In Massachusetts, where the council has had the longest active experience in proposing specific bills for legislative adoption, there have been very substantial results. The 15th *Report*, issued in 1939, noted the passage, since the last report, of six bills recommended by the council; the 1938 report noted the passage of five such bills; the report of 1937 noted nine such bills. The 1939 report of the New York judicial council called attention to fifteen measures presented to the legislature by the council during the preceding year, which had been embodied in thirty-eight acts, in addition to nine recommendations embodied in eight amendments to the Rules of Civil Practice.

The effectiveness of a judicial council cannot be measured, however, by the volume of such direct accomplishments. The more intangible results of the work of the council, in stimulating discussion and suggesting lines of thought for members of the bench, bar, legislative bodies, newspaper press, and general public are probably even more important.

EDSON R. SUNDERLAND.

*University of Michigan.*

**The Judicial Council of the State of New York; Its Objectives, Methods, and Accomplishments.** I. *The Judicial Council and Its Objectives.* My assignment is to implement Professor Sunderland's brilliant primer on judicial councils by a more specific presentation utilizing the experiences of the New York State Judicial Council. Of the three elements that enter into a consideration of the judicial branch of government, the first—the substantive law, the law of rights and duties—is not within the province of the judicial council either in New York or elsewhere. The second element—the machinery of justice—is the principal field of the judicial council. If the council does its work well in that field, attention cannot fail to be focused upon the third and most important element—also part of a judicial council's problems—the judicial personnel.

As Professor Sunderland has stated, the improvement of the machinery of justice is the most neglected of these three elements. Permit me to point out that a new technique is required in dealing with this phase of the problem. Problems of substantive law have been intensively developed in the law schools and in legal literature in this country during the past half-century. Not so with adjective law. The development of a method of approach and solution to its problems remains a pioneer work.

The Judicial Council of the State of New York was created by statute in 1934 as a permanent research body to advise the legislature and the courts

on improvements in the administration of judicial justice. It deals with the organization, jurisdiction, practice, procedure, evidence, and administration of the courts. It is a clearing house for complaints and suggestions. The only direct power that the Judicial Council has is that, to assist it in obtaining facts and to carry out a constitutional mandate, it may establish systems of judicial statistics and record-keeping for the courts, and may also exercise the power of subpoena.

The fifteen members of the Council represent the bench, bar, legislature, and public. Representing the bench are five judges. The Chief Judge of the Court of Appeals, our highest state court, is chairman. The presiding justices of the Appellate Division of the Supreme Court for each of the four judicial departments into which our state is divided are members *ex officio*. The chairman and the ranking minority member of the senate and assembly judiciary committees represent the legislature. The other members are appointed by the governor: one lawyer from each of the four judicial departments representing the bar, and two lay members representing the public generally.

Since its creation, the Judicial Council has devoted itself to removing the four classic defects in the administration of civil justice—unnecessary delay, complexity, uncertainty, and expense. From the outset, we decided that delay due solely to court calendar congestion was unreasonable if it extended more than two months in a commercial case or more than six months in a tort case. Of course, the problem of delay could have been solved by increasing the number of judges or otherwise increasing the expense of administering the judicial system. The problem, however, was to reduce and eliminate delay without any increase in cost. Because this problem had never been solved in New York State, many people were under the impression that it could not be solved.

II. *Some General Observations on the Advantages and Limitations of a Judicial Council.* In addition to the requisites of a successful judicial council which Professor Sunderland has so succinctly stated—that is, a will to do on the part of its members, a group and geographical representation to insure impartiality, and adequate financial support—permit me to mention three other factors. The first is the element of continuity—perpetual vigilance to replace the old methods of sporadic bolstering of the judicial system after chronic collapses. The second, perhaps equally if not more important, is that all recommendations be based upon an accurate, current factual and statistical foundation. Recommendations are no longer made on the basis of hypotheses, no matter how plausible. The third is that in New York the Council's functions are purely advisory. For this reason, it is generally recognized that the Council's recommendations are unbiased and solely in the public interest.

Given the foregoing requisites, the Judicial Council has accomplished



much. But, as we have discovered, an inherent limitation springs from one of these sources of strength. I refer to the fact that the New York Judicial Council, as a purely advisory body, can properly only publish its report and recommendations, and prepare its bills, thereafter confining its contact with the legislature to the Council's four legislative members. It cannot with propriety do more to further its recommendations if the legislature should fail to act.

Occasionally our recommendations do need champions, particularly when a frontal attack is made. For example, recommendations that the legislature consolidate courts or decrease the number of judicial officers, that court fees be reduced, or that registered mail be utilized to effect service of process—proposals such as these cannot hope for immediate success, because all those persons who are adversely affected, either economically or otherwise, bestir themselves to oppose the measure. The one group that could most properly and effectively champion such recommendations is the organized bar. I think it can be said without hesitation that the organized bar in New York is one hundred per cent in favor of the Council's work. Nevertheless, in that organized bar only a small percentage of lawyers is interested, and an even smaller percentage is active. In fact, the bar relies on the Council.

III. *The Organization and Methods of the Judicial Council.* Just as history proves the need for the legislature and the courts alike to lean upon disinterested expert advice, so the Judicial Council itself relies in the first instance upon expert research and draftsmanship. Staff organization is therefore vital. In New York, the director who heads the staff is called the executive secretary. A judicial council director must have the attributes of both a professor and a practitioner. In addition, he must be a draftsman, and to obtain coöperative consideration all along the line he is required to be a diplomat. In short, he is something new, and I have ventured to coin a word to describe him—"judician." In New York, of three research assistants, one is principally in charge of judicial statistics, a second deals almost exclusively with library work, a third is in charge of the office administration and field work. Three stenographer-clerks complete the personnel. The staff devotes full time to its work. Part-time application, which has been responsible for the preparation of our adjective law in the past, has not been the least of the reasons for its constant breakdown.

Suggestions and criticisms come to us from all sources. We first make certain that a claimed defect actually exists, by checking the law, the facts, and the statistics. A staff member then prepares a study of the subject for which he is principally responsible, although all other members of the staff contribute their suggestions. Such a study is intended to be an exhaustive and complete reference work, to be published in the annual re-

ports for the benefit of the bench and bar; and it usually follows a regular pattern. The New York law is traced historically, the methods of dealing with the subject in sister states are compared, and the subject is analyzed functionally. In the course of such triple analyses, the solution of the problem very often emerges. If not, further deliberation and consultation ensue. In any event, it is an iron-clad rule that the solution for a defect shall not be worse than the evil sought to be corrected. We then prepare a draft statute or rule embodying the solution. This we try to make clear, unambiguous, concise, and yet as complete and farsighted as vision permits. The statute or rule thus prepared, with the supporting study, is distributed to the members of the Council at its monthly meetings and passed upon.

After consultation with the chairman, many suggestions are rejected upon receipt. Some are rejected after preliminary research as unworthy of being brought to the attention of the Council. The Council rejects some proposals submitted to it after research, and more frequently modifies them. Likewise the legislature either rejects or modifies some Council proposals, and finally the governor occasionally vetoes a legislative enactment. Under this winnowing process, it is difficult for any unmeritorious matter to be enacted into law.

Our annual program is usually planned to include one or two recommendations of basic importance, for example, a uniform city court act. Second, we include several recommendations which are also of importance but not quite so far-reaching, for example, a revision of bills of particulars practice. Third, we present a half-dozen non-controversial improvements which by comparison are significant chiefly to the legal profession. Fourth, we recommend a few corrective formal changes. The third and fourth categories are usually accepted without question. The second group is likely to be accepted after some scrutiny. The first category, although small, has not fared too well, principally because one proposal may contain a good many controversial suggestions and all persons objecting to any one particular matter join the opposition.

IV. *Some Council Recommendations.* In the six years since the organization of the Council, 155 of its recommendations have been adopted either as statutes or as court rules, while 15 have not yet been adopted. These recommendations, some of which comprise literally hundreds of changes, cannot properly be considered singly, but should be considered together, like wire strands which go to make up a cable. In this field, the whole is greater than the sum of all its parts. Let me attempt to illustrate exactly what we have done by brief mention of a few of the more important recommendations.

1. *Civil Judicial Statistics.* As I have stated, the only direct power of the Judicial Council is to establish a system of judicial statistics. Conse-

quently, its first and possibly its most fundamental accomplishment was the establishment of a system for collecting civil judicial statistics, effective January 1, 1935. Such figures, although not ordinarily associated with problems of court procedure and administration, are to my mind essential in dealing with these problems. We have endeavored to establish a system at once simple, inexpensive, accurate, uniform, and above all, useful.

Briefly, we require the clerks of all civil courts, with the exception of some rural districts, to report the following information to us monthly on forms which we provide: first, a recapitulation showing the amount of work entering the court, the amount disposed of, and the amount left pending; and second, a notation of the exact point at which cases were disposed of in the courtroom each day, for example, whether disposed of on calendar call, during the trial, or by trial. So far as the manner of disposition is concerned, statisticians would refer to these as "mortality" reports.

I recognize as much as anybody that this is relatively an unplowed sociological field. Cynics occasionally ask, *cui bono*? When Farraday discovered the principle of the electric generator, he was asked of what use his experiments would be. He answered, as Benjamin Franklin had before him, "What is the use of a new born child?" So generally of judicial statistics. But in New York certain very great advantages have already become apparent.

In the first place, the figures show what work can be done, what is being done, and what remains to be done. They have proved the stimulus to the judges that Chief Justice Taft prophesied. They stimulate quality and quantity of work. They make possible better administrative control of the courts by arranging for assignments of judges from one part of the state to another.

In the second place, the information is of use in considering practice and procedural changes both before and after their adoption. The figures have shown that the five-sixths verdict in civil jury cases resulted in approximately 300 less jury disagreements, with requisite retrials each year—a noteworthy contribution to the reduction of delay and expense.

2. *Organization of Courts.* In 1935, the official referee system was revised and the jurisdiction of the official referees extended. By this means, more work of a detailed and lengthy nature could be and in fact has been given to the judges, who by constitutional mandate are forced to retire upon reaching the seventy-year age limit.

The four presiding justices of the Appellate Division of the Supreme Court are by law permitted to transfer supreme court justices from the judicial districts for which they have been elected, and in which there may be little work, to another district which may be somewhat congested. Since the presiding justices meet monthly as members of the Judicial

Council, there have been much more frequent assignments of the supreme court justices than heretofore.

Last year, we recommended a revised judiciary article of the constitution. The bill failed to pass the senate by one vote, but perhaps it will be more favorably received when the recommendation is renewed. The article contains proposals, among other things, for consolidation of certain courts tending toward their unification; proposals to permit the temporary emergency assignments of judges of courts other than the supreme court to courts other than those for which they were elected; and proposals for the removal of judges by our highest court, in addition to the present methods of impeachment and removal by the senate.

3. *Organization of the Jury System.* As to the jury system, at first the Council recommended particular improvements, such as women jurors and reducing the grounds for exemption from jury service, which were adopted and appear to be working very successfully. But last year, the Council recommended an entirely revised jury system for the City of New York which became effective September 1, 1940. That revision included provisions for insuring more care in examining and qualifying jurors, providing for as infrequent service for as short periods as possible in order to encourage citizens to serve, and providing for an extension of jury pooling with its consequent saving in cost. It is already clear that this revision has resulted in an improved jury personnel and a much more efficient administration of the jury system.

4. *Pleading.* Tremendous progress has been made in avoiding multiplicity of actions by permitting any type of cause of action to be joined in the same complaint or any type of counter-claim to be interposed, if the court believes the joinder or interposition would not inconvenience a just handling in one action.

5. *Trial and Preparation Therefor.* One of the principal contributing factors in reducing delay consisted of changes in the calendar practice which made it mandatory that a case be placed promptly upon the calendar or be dismissed. Bills of particulars practice was revised to be uniform throughout the state. The revision provided that such particulars be given as automatically as possible and be standardized as to personal injuries actions. Although successful with this improvement, we have not yet prevailed with our recommendation for a revision of the examination before trial procedure or with that for a pre-trial calendar and hearing.

Limitations of space prevent any discussion of the changes in trial procedure. Perhaps the most important was the five-sixths jury verdict in civil cases, already mentioned.

6. *Judgment and Its Collection.* Facilitating the machinery by which money judgments may be collected from those able to pay has been one of the important matters to which the Council has devoted itself, because the

Council felt that once a judgment had been made a thing of value, and not only made such but recognized to be such, the entire judicial process would benefit. We have been singularly successful in this field, having improved proceedings supplementary to judgment and executions, while this year we are recommending rounding out the attachment practice.

7. *Appeals.* We have provided for reducing the size of records on appeal, with consequent saving in expense. Many changes have also been made which insure a litigant that his appeal will not be lost for purely technical practice grounds.

V. *Results.* What have been the results of our work? In 1934, there was great delay in all types of cases and in all parts of the state, particularly in tort jury cases, where delays of three years were common. Today, within our standards of no more than six months' delay for tort cases and no more than two months' for commercial cases, delay has been substantially eliminated and calendar conditions in our courts were never better. There is no delay in any commercial or equity case, nor does it take more than two or three months to dispose of an appeal. The calendars have been cleared in the Municipal Court of the City of New York, which has jurisdiction up to \$1,000 and disposes of the largest volume of civil litigation of any court in the country. This is a very large accomplishment. Pending cases in the Municipal Court dropped from 73,837 in June, 1934, to 19,829 in June, 1940. Delay in 1934 in the City Court of the City of New York, which handles cases involving amounts from \$1,000 to \$3,000, ranged from three to five years. That has been substantially eliminated, and the situation gives every promise of clearing entirely within the present judicial year.

In the supreme court, which is our great court of original jurisdiction, we still have delay in seven of the sixty-two counties of the state, although in June, 1933, much greater delay existed in twenty-one counties. Four of the seven counties present very little of a problem because the number of cases on the calendars has been so materially reduced. Thus the Council is able to concentrate on delay in the remaining three counties, which handle the largest amount of litigation in the state.

Of course, it is not asserted that these results were obtained solely through the activities of the Judicial Council; they required coöperative effort from the judges and from the legislature. There was also the unquestioned effect of natural causes, for example, a constant decrease in automobile injuries occurring on the highways of New York since 1928. The reduced volume of incoming cases in those spots where delay still exists varies from 12 per cent to 25 per cent, depending on the court and location. But, by and large, the contribution of the Judicial Council to the result is definite, because a constant, concentrated effort, both legislative and judicial, has been made to this end.

In view of the fact that delay has been substantially eliminated, more direct attention is now being paid to the reduction of complexities and uncertainties in practice and procedure. With standardization and unification of procedure, the number of practice decisions in our courts is steadily decreasing. The Judicial Council, by its mere existence and constant watchfulness, without any express power, has clearly stemmed the vagaries of some judges. Special legislation by which changes in procedure were formerly enacted by the legislature for the benefit of some particular litigant no longer exists. Finally, the administration of justice in the New York courts is today properly subject to a steadily narrowing amount of legitimate adverse comment. There is no longer any literature of facile general criticism.

On the whole, as I inferred at the beginning, criticism of the courts, which has been widespread in the past, is today coming down solely to a question of personnel; because the prompt, efficient, and just disposal of disputes in the New York courts has become a reality—a reality in which the Judicial Council has played the part for which it was established.

LEONARD S. SAXE.

*Executive Secretary, Judicial  
Council of the State of New York.*

## FOREIGN GOVERNMENT AND POLITICS

**The Committee of the Whole in the Reign of James I.** The origin of the English committee of the whole has evoked much conjecture from historian and political scientist alike, but no conscientious scholar has as yet found the subject worthy of exhaustive study. A scrutiny of the parliamentary sources for the period by the present writer shows, however, what the difficulties are. The meagreness of the records, especially for the sessions of 1604 and 1610, render a thorough examination of the problem almost impossible. In Professor Notestein's *The Winning of the Initiative by the House of Commons*,<sup>1</sup> we find the best treatment of the committee of the whole house. But the discussion is short and fails to satisfy the more curious student of parliamentary procedure. Professor Notestein tells us that, about 1607, "there appeared, rather accidentally, the Committee of the Whole House, a Committee at its beginnings so little different from the 'General Committee' of late Elizabethan days that its appearance excited little comment. . . . By 1610 it was becoming customary to refer many matters to it; by 1614 the House went into such a Committee on the least occasion; by 1621 there were four several Committees of the Whole House, which met on different afternoons, and the House went often into Committee in the afternoon about any matter in hand."<sup>2</sup> All this is undoubtedly true, but that authority is unable to assign any definite reason for the development of this practice and spends most of his time discussing the effects, which are undoubtedly more important to the historian. The problem of origins remains, however, unanswered.

In commenting on the origins, Professor Notestein points out the similarity between the "general committee" of late Elizabethan days and the early committee of the whole house. The present writer is unable to distinguish any important difference between the two and believes that they are one and the same. Both committees included all the members of the House of Commons; discussion was less restricted by the hardening rules of procedure; and in both the Speaker was absent from the chair. These, even in more recent times, have been the important features of the English committee of the whole.<sup>3</sup> The "general committee" of the late Elizabethan parliaments seems only another name for the newly-emerging committee of the whole. The records of these parliaments mention no fewer than five times the use of the general committee; and from these accounts there seems little doubt that we are witnessing the introduction of a new device in parliamentary procedure which resembles, in all essentials, the com-

<sup>1</sup> Wallace Notestein, *The Winning of the Initiative by the House of Commons* (The British Academy. Raleigh Lecture on History. London, 1924).

<sup>2</sup> *Ibid.*, p. 37.

<sup>3</sup> Josef Redlich, *The Procedure of the House of Commons* (London, 1908), II, pp. 199-200.

mittee of the whole. And the contemporary Heywood Townshend, a member of the House of Commons, actually states that there were afternoon sessions of the House as a committee.<sup>4</sup>

The first definite record of the general committee that we have is found in a sitting of the House of Commons on March 7, 1592/3. And it is evident that this committee cannot have been used much earlier, for Sir Thomas Smith, writing in the sixties but later revising his work, failed to mention the device.<sup>5</sup> Besides, the entry for March 7, 1592/3, gives evidence of a certain unfamiliarity of the House with this committee procedure. In a debate over a subsidy to Queen Elizabeth, we are told: "Now stood up two or three to have spoken, striving who might speak first. Then the Speaker propounds it as an Order in the House in such a Case, for him to ask the parties that would speak, On which side they would speak, whether with him that spake next before, or against him; and the party that speaketh against the last speaker is to be heard first. And so it was ruled. Where it may seem, that the Speaker did give admonishment sitting in the House as a Member thereof, and not sitting in his Chair as Speaker, which he never doth at any Committee although it be of the whole House."<sup>6</sup> Such indecision on the part of the presiding officer is strong evidence of the novelty of this method of procedure. And that the committee was a committee of the whole is apparent from D'Ewes's remarks. It is also interesting to note that the Vice-Chamberlain made the report the next day from the general committee of the preceding afternoon, and that the decisions arrived at in committee were adopted without questioning by the House.<sup>7</sup>

Although we find several references to other meetings of the general committee,<sup>8</sup> the information is sketchy and leaves much to be desired. There is little reason, however, to doubt that the House of Commons was finding the less formal manner of procedure in committee of the whole of value for the fuller discussion of important matters.<sup>9</sup> It is also interesting to note that a royal official was charged with making the report from the committee, and that the Speaker's advice was so readily accepted. It is

<sup>4</sup> Heywood Townshend, *Historical Collections* (London, 1680), pp. 197-200, 238, 243, 288.

<sup>5</sup> Sir Thomas Smith, *De Republica Anglorum* (edited by L. Alston, Cambridge, 1906).

<sup>6</sup> Sir Simond D'Ewes, *The Journals of All the Parliaments during the Reign of Queen Elizabeth* (revised by Paul Bowes, London, 1682), p. 493.

<sup>7</sup> *Ibid.*, p. 495.

<sup>8</sup> D'Ewes, *Journals*, pp. 629-31; Townshend, *Historical Collections*, pp. 197-200, 238, 243, 288.

<sup>9</sup> Of the five meetings of the general committee, two were held for the discussion of subsidies to the Queen, two were for the discussion of monopolies, and one involved consideration of the Dunkirk Affair.



clear that the Elizabethan general committee was not devised to weaken the influence of the Crown in Parliament, but rather to facilitate discussion of important matters. And if we regard the Elizabethan general committee as an early committee of the whole (and there seems no evidence to challenge this view), we must reject the common assertion that, in the reign of James I, the "committee of the whole was first used by the House of Commons, primarily to protect itself against the king."<sup>10</sup> Such may have been the reason for later use of the committee, but it seems reasonable to conclude that the committee of the whole evolved in the late Elizabethan parliaments because it provided greater opportunities for debate than the ordinary sitting of the House, in which it had long been recognized that a member could speak only once to a matter on the same day.<sup>11</sup>

But this view is not entirely erroneous. The increasing use of the committee of the whole house in the parliaments of James I coincides with the growing intensity of the struggle between Crown and Commons. The more frequent use of this committee was undoubtedly due, in part, to a recognition of its efficacy as a device to hinder the Speaker and the Privy Councillors from exerting an undue influence over the actions of the members of the Commons. Professor Notestein declares it impossible to say that this was a practice developed to get rid of the Speaker. But he notes that "during the first years of James' reign, the King was doing frequently what Elizabeth had done only now and then, summoning the Speaker into his presence as if he thought the Speaker instead of Councillors was the natural channel of communication between Sovereign and Commons. Whether or not there was any connection between the development of this new procedure and the close relations between King and Speaker, it is certain that the Commons found it a convenience of the committee plan that the Speaker could no longer regulate their debates. The Committee of the Whole House usually chose men who were not privy councillors as chairmen; in the twenties, almost without exception, they chose men from among the new leaders of the House."<sup>12</sup>

In the first session of Parliament in the new reign, there is mention neither of the general committee nor of the committee of the whole. But such omission is not definite proof that the device was not being used. The *Commons Journal* would necessarily omit any description of the proceedings of the House in its unofficial meetings. In any event, we fail

<sup>10</sup> Lindsay Rogers, "Legislative Committees," in the *Encyclopedia of the Social Sciences* (New York, 1931), IV, p. 40.

<sup>11</sup> Smith, *De Republica Anglorum*, p. 54. "He that once hath spoken in a bill though he be confuted straight, that day may not replie, no though he would change his opinion. So that to one bill in one day one may not in that house speake twice. . . ."

<sup>12</sup> Notestein, *op. cit.*, p. 37.

to find a reference to the committee of the whole until 1606.<sup>13</sup> The rising opposition between the King and Commons was reflected in the attitude of the lower house toward the Speaker. On March 11, 1605/6, in the matter of purveyance, the House found that the large committee was a useful device for freer discussion. After a long debate, "the Howse ordered that the former committees<sup>14</sup> appointed to consider of grievances should consider farder thereof, and likewise what is fit to be doon for supplie of the Kings occasions, and at this Committee anie of the Howse to be present and every man present to have voice as a Committee, the time to be to morrow being wensday, 12 *Martii* in the afternoone, the place, the parliament chamber."<sup>15</sup> Mr. Campion, in his account of the procedure of the House of Commons, is undoubtedly right in his shrewd guess that the transition to committees of the whole house was partly due to the practice of allowing the larger select committees to be attended by other members of the House, who had not been nominated members of the committee.<sup>16</sup> But his reason for this permission, the relatively high quorum of a committee, is far less convincing.

The first definite mention that we have of the committee of the whole, in the reign of James I, is found in an entry for April 24, 1606. The hostility toward the Speaker is easily discernible. "The Committees for the Matter of Grievances or so many of them as were present, and such as offered and arose voluntarily to accompany them; went up into the Committee Chamber to Marshall these Grievances, during which tyme being a full hower the House did sitt idle without doeing anything; after which long pawsing, the Committees sent word that they would come downe into the House (if so it pleased the House) and conferr with the Company, not as in the House, but by way of Committee: This the Speaker having received from them by the Sergeant, did deliver to the House, and the House alloweing thereof; The Speaker added, that himselfe in this Case was to departe the place, which with allowance he did and the most of the Company departed with him. . . ."<sup>17</sup> The statement, "that himselfe in this Case was to departe the place," is of unusual interest. Was the Speaker merely weary of waiting for the committee to report? Or was this a recognition that he was excluded from the meetings of the committee of the whole? There is little other evidence available to inform us of the Speaker's

<sup>13</sup> Professor Notestein found the first meeting of the committee of the whole in 1607. The appearance of Bowyer's *Diary* in 1931 has given us, however, new reliable information which Notestein did not have at the time he wrote.

<sup>14</sup> The term "committees" was generally used during this period to denote the individual members of a committee.

<sup>15</sup> David Harris Wilson, *The Parliamentary Diary of Robert Bowyer, 1606-1607* (Minneapolis, 1931), pp. 76-77.

<sup>16</sup> G. F. M. Campion, *An Introduction to the Procedure of the House of Commons* (London, 1929), p. 21.

<sup>17</sup> Bowyer, *Diary*, p. 136.

position at this time in the committee of the whole. But if he truly recognized that he was excluded from these meetings, then two important deductions can be made. First, that this meeting of the committee of the whole was not the first one held recently. How, if a well-defined practice had not been developed, did the Speaker recognize that "himself in this Case was to departe the place?" The second deduction we may make is that, by 1606, the Commons had become sufficiently hostile to the Speaker to wish him excluded from the committee of the whole. But the wording of this passage is vague, and such conclusions, although supported by other evidence,<sup>18</sup> are exceedingly dangerous. The practice, as we shall see, was far from uniform, and in many cases it is extremely difficult to determine whether the Speaker merely left the chair or left the House.

On November 27, we find a definite endorsement of the committee of the whole house by one of the leaders of the opposition. Concerning the proposed union with Scotland, "Sir Edwyn Sandys moved a Conference with the Lords, but not before we have here debated it by Points; But, quoth he, the 2d. Question being, Whether here to be debated by a Committee or in the House, I thinck by a Committee, because there a reply is admitted, which is not here."<sup>19</sup> This greater freedom of debate was undoubtedly of large importance in stimulating the use of the committee of the whole, but we wonder whether that was the most important reason for Sandys' proposal.

The difficulties over James' project of a union with Scotland led to increasing use of the committee of the whole. It is worthy of note that the Speaker was definitely excluded from some of the meetings. On May 7, 1607, for example, it was moved that the bill concerning hostile laws between the two countries should be committed, and it was "Affirmed, that if Mr. Speaker were absent, the whole House might be a Committee; and thought fit to commit this Bill to the whole House, Mr. Speaker only excepted."<sup>20</sup> It is of considerable interest, too, that the motion to go into committee followed a speech by Sir George Moore, another popular leader, concerning "Speeches carried, or miscarried to his Majesty."<sup>21</sup> The Speaker, recognizing a shaft aimed at him, felt impelled to make an indignant but scarcely convincing repudiation of the charges.<sup>22</sup>

During this session, the motion for going into a committee of the whole seems closely connected with the departure of the Speaker. On June 26, it was "Disputed, whether Mr. Speaker should depart, and the Committee sit,"<sup>23</sup> but the House, finding no precedent for a committee of the whole

<sup>18</sup> *Commons Journal*, I, 371; I, 1042; I, 429.

<sup>19</sup> Bowyer, *Diary*, p. 197.

<sup>20</sup> *C. J.*, I, 371; I, 1042.

<sup>21</sup> *Ibid.*, I, 1042.

<sup>22</sup> *Ibid.*

<sup>23</sup> *C. J.*, I, 1054; cf. I, 387. "The Amendments and Provisions annexed to the Bill of hostile laws, sent down from the Lords, were secondly read, and committed to the Great Committee named upon the Second Reading of the Bill itself in this

during the Speaker's usual attendance upon the House until eleven o'clock, decided to defer the committee until the afternoon.<sup>24</sup> The more complete account obtainable from Bowyer's *Diary* tells us that it was Sir William Strowd, another opponent of the proposed union with Scotland, who moved for the departure of the Speaker.<sup>25</sup>

Although the select committee continued to be, throughout the reign of James I, the customary mode of procedure in the House of Commons, on important matters on which there was much difference of opinion between the Crown and Commons it is increasingly evident that the committee of the whole was finding favor as a parliamentary device of the leaders of the opposition. On occasion, a Crown official presided, but usually there were good reasons why such selection was made. In the committee meeting on June 26, 1606, Mr. Fuller thought it wiser to refuse the chair in favor of Mr. Attorney, and, with that royal official in the chair, Mr. Fuller took a prominent part in the debate.<sup>26</sup> In this second session of Parliament, it is easily apparent that the new leaders of the House of Commons had recognized the possibilities of the rather new and hitherto infrequently used committee of the whole and were using it more and more frequently for the discussion of controversial issues.

By 1610, the use of the committee of the whole was becoming more common. The desire of the lower House to obtain redress for their numerous grievances stimulated the use of that mode of procedure. The committee of grievances, appointed on February 15, 1609/10, to consider Salisbury's request for supply,<sup>27</sup> was a select committee, but it included all the lawyers of the House, the first knight of every shire, and the first burgess of every borough. Any member who so wished had the right to attend. The similarity between the large select committee and the committee of the whole is striking and illustrates once more the complex factors that led to the initiation of the committee of the whole as the regular mode of procedure in the House of Commons. Following the king's assent to the Commons' request to treat the subject of feudal tenures and wardships, the House proceeded to grapple with that knotty problem. Mr. May proposed a committee of the whole to sit every other day to discuss the problem, but it was finally decided by the House that a committee of the whole, to deal with the matter, should start sitting the next morning from seven or eight until 9:30.<sup>28</sup> The regularity of the sittings that followed is made clear by the order of the House, two days later, on March

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House: And moved, that Mr. Speaker might depart, and the Committee being compounded of the Whole House, and now together, and the Business of the House very little, might (for saving of Time) presently into Consideration of their Charge . . ."

<sup>24</sup> *Ibid.*, I, 387-8.

<sup>25</sup> Bowyer, *Diary*, pp. 351-6.

<sup>26</sup> *Ibid.*, p. 356.

<sup>27</sup> *C. J.*, I, 393-94.

<sup>28</sup> *Ibid.*, I, 411. Motion of Sir Maurice Berkeley.

17, to the Clerk "to attend, and say Prayers in the Morning, at the great Committee for Wards."<sup>29</sup>

It is important to note that, contrary to the practice in the preceding session, the Speaker usually attended the meetings of the committee. On March 23, we are informed that "This Day the Committee for Tenures, etc., sat till half an Hour after Eleven; the Speaker, from Nine sitting in the Clerk's Chair; the Clerk standing at his Back; and Mr. Recorder, the Moderator of the Committee, sitting on a Stool by him."<sup>30</sup> On March 26, Sir Henry Montague, the Recorder, reported from this committee discussing the Great Contract, and proposed that, in return for £100,000, the king should give up all the emoluments resulting from all feudal tenures with the exception of the aids.<sup>31</sup> The unwillingness of the king to accept these terms led to renewed sittings of the committee of the whole on tenures and wardships;<sup>32</sup> but, on May 4, the negotiations were, for a time, brought to a close.

The high interest in impositions which the committee on grievances, under the leadership of Edwin Sandys, was discussing ensured heavy attendance at the meetings of that large select committee. The records lead us to infer that it was fast becoming a committee of the whole; for we are informed that on May 19, "Mr. Speaker retired to the Committee Chamber. The Committee for Grievances appointed to sit presently; touching the Messages . . . Mr. Speaker came down again, and the Message reported to the House by Mr. *Martin*."<sup>33</sup> Interest seems to have been so great that during this meeting of the committee of grievances there was no sitting of the House. Another break in the regular procedure followed when the question of entering the Speaker's purported message from the king<sup>34</sup> was discussed by the House in committee. After the committee decided against entering it, "Mr. Speaker ascendeth his Place again. Mr. *Martin* reported the Agreement of the Committee . . ."<sup>35</sup> James' refusal on May 21 to promise discontinuance of impositions was followed by an angry scene in the House of Commons. Sandys moved for a committee to consider how they might obtain satisfaction. The motion was carried without a division.<sup>36</sup> And in the afternoon, the committee met.<sup>37</sup> On May

<sup>29</sup> *Ibid.*, I, 412.

<sup>30</sup> *Ibid.*, I, 414.

<sup>31</sup> Samuel R. Gardiner, *Parliamentary Debates in 1610* (Camden Society Publications, Vol. 81, London, 1862), p. 146.

<sup>32</sup> *C. J.*, I, 420. On the motion of Mr. Martin, it was agreed that the committee meet as before at 7 A.M. until 9.

<sup>33</sup> *Ibid.*, I, 429.

<sup>34</sup> On May 11, the Speaker informed the House that he had received a message from the king commanding them to refrain from discussing the royal right to levy impositions in general. Finally, upon question, the Speaker confessed that the message was not from the king but from the Council. See S. R. Gardiner, *History of England, 1603-1642* (London, 1883-84), II, p. 70.

<sup>35</sup> *C. J.*, I, 430.

<sup>36</sup> *Ibid.*, I, 430-31.

<sup>37</sup> *Parl. Debates*, 1610, pp. 36-41.

23, Sandys reported the petition of right which the committee had drawn up, in which the Commons asserted their right to debate any matter which concerned the rights and interests of the subject.<sup>38</sup> Again in June, after the king had granted them the right to discuss the whole matter,<sup>39</sup> the Commons proceeded, in committee, to consider the subject of impositions.<sup>40</sup> On June 23, the House resolved itself into a committee of the whole. "At Nine a Clock, Mr. Speaker removed from his Chair; and the Committee for the Dispute of new Impositions—and was disputed."<sup>41</sup> For four days the debate continued,<sup>42</sup> and, on July 3, Sandys finally reported its results.<sup>43</sup> A sub-committee was appointed by the committee of the whole to draw up a petition which was to be inserted in the general petition of grievances. The rest of the session saw numerous sittings of the committee of the whole. This device was fast becoming a common part of House procedure. The Great Committees, as they were often called, sat usually for discussion; the detailed work was assigned to small sub-committees.

For the second session of 1610, we have little available information about House procedure, but the Parliament of 1614 saw even more use of the committee of the whole than in 1610. On April 8, immediately after the opening of the session, it was ordered that the "general Committee of the whole House, for receiving Petitions, to meet every *Tuesday*, in this House, at Two in the Afternoon."<sup>44</sup> But following a motion of Mr. Hake-well, it was decided to tie the committee to no fixed time of meeting.<sup>45</sup> And on Monday, April 11, Sir Edwin Sandys moved, "for avoiding Precipitation, and Prevention, and Division, That in all such Motions as shall not come in by Bill, and shall concern the general [welfare], no Resolution may be [made] that Day; but it may be committed, and reported; the rather, because here One may speak but Once in One Day, where, at the Committee, Two or Three times; whereupon often the Committees, first disagreeing, afterwards agree."<sup>46</sup> Although decision on this motion was deferred, the value of the committee of the whole, it is clear, was being recognized—especially by the leaders of the opposition. Important matters were referred almost at once to a committee of the whole house. On April 11, the act concerning the Elector Palatine and the Princess Elizabeth was referred, after the second reading, to a committee of the whole.<sup>47</sup> It is worthy of note, however, that Mr. Attorney (Sir Francis Bacon) re-

<sup>38</sup> *C. J.*, I, 431.

<sup>39</sup> On May 21, the king had angrily declared that he would not have his prerogative questioned, but on May 24 he found that he had gone too far. In reply to the deputation sent by the Commons with the petition of right, James gave them full liberty to consider the subject. Gardiner, *History of England*, II, 70-72.

<sup>40</sup> *C. J.*, I, 436-40.

<sup>41</sup> *Ibid.*, I, 443.

<sup>42</sup> *Parl. Debates*, 1610, pp. 63-110.

<sup>43</sup> *C. J.*, I, 445.

<sup>44</sup> *Ibid.*, I, 457.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*, I, 458.

<sup>47</sup> *Ibid.*, I, 459.

ported back the measure from committee.<sup>48</sup> On April 12, a bill for free trade was referred to the committee on petitions;<sup>49</sup> and, on April 15, the House, on Sandys' motion, agreed that the grievances which had been presented to the last Parliament should also be discussed by the committee on petitions.<sup>50</sup> During the next few days, various other important matters were referred to committees of the whole. On April 18, after the second reading, the bill "concerning Taxes and Impositions upon Merchants" was committed to the whole House,<sup>51</sup> as were the matters of the Cambridgeshire election, recusants, and "undertakers" in the last election.<sup>52</sup>

By the beginning of May, so much business had accumulated in the committee for petitions that Sandys moved, in behalf of that committee, that it now be allowed to sit on Tuesdays, Thursdays, and Saturdays. The House readily consented.<sup>53</sup> The committee engaged in another long discussion of impositions;<sup>54</sup> the Cockayne project, too, received consideration.<sup>55</sup> On May 27, the speech of Neile, bishop of Lincoln, was there discussed at a meeting called "to consider of an Answer to the King's Letter; and to take into their Consideration of all Misinformations made to his Majesty." Again the Speaker felt that he was the object of attack and endeavored to clear himself from the charges.<sup>56</sup> The continued attacks on Neile, despite his excuses, led the king, on June 3, to threaten the Commons that, unless they proceeded immediately to treat of supply, he would dissolve Parliament.<sup>57</sup> On the motion of Sir Herbert Crofts,<sup>58</sup> however, a committee of the whole was chosen to discuss the matter and to prepare an answer to the king's message. The dissolution of Parliament followed soon after, but the session of 1614 must be considered the first in which the committee of the whole was differentiated for the discussion of various matters and was given specific days and hours of meeting. This was especially true of the committee of the whole house on petitions, which was assigned at the beginning of the session every Tuesday afternoon for meetings.

In the parliament of 1621, however, the use of the committee of the whole became even more definitely established. So much business had been assigned to the overburdened committee of the whole for petitions that four such committees were now named, with specific subjects of discussion. The committee for petitions, which, in the session of 1614, had acted as a "steering committee," was now made a select committee, but its work was apportioned to four committees of the whole. At the suggestion of Sir Edward Coke, a committee of the whole for grievances and the

<sup>48</sup> *Ibid.*, I, 461.

<sup>49</sup> *Ibid.*, I, 464.

<sup>50</sup> *Ibid.*, I, 466.

<sup>51</sup> *Ibid.*, I, 466-67.

<sup>52</sup> *Ibid.*, I, 468, 470, 471.

<sup>53</sup> *Ibid.*, I, 475.

<sup>54</sup> *Ibid.*, I, 487, 490, 491.

<sup>55</sup> *Ibid.*, I, 492.

<sup>56</sup> *Ibid.*, I, 500.

<sup>57</sup> Gardiner, *Hist. of England*, II, 244-45.

<sup>58</sup> *C. J.*, I, 505.

king's supply was set up by the House.<sup>59</sup> At the first meeting, Coke was called to the chair, but immediately was challenged by Sir Carew Raleigh, who erroneously stated that "it was never seen that a Privy Councillor was called to the Chair." In reply, however, it was pointed out "that being all members of one House there was no difference and therefore the House might set up anyone whom they pleased . . ."<sup>60</sup> Besides, it was clear to all that Coke was no longer consulted by the king; he had broken with James in 1616, and, although recalled in the next year to the Council, he had from the first, in the Parliament of 1621, appeared as a popular leader and the most notable man in the House.<sup>61</sup>

Three other committees of the whole were named—for courts, trade, and religion. Although criticisms of this mode of procedure were still forthcoming,<sup>62</sup> an ardent defender was found in Sir George Moore, who justified the committee of the whole on grounds of earlier procedure. "Anciently committees were but a few and that of those only that speak to the bill, but if the bill concern general grievances then one knight of every shire and many times the whole House."<sup>63</sup> And the general opinion of the House was on his side; for in the long debate about the decay of the cloth trade, "Divers moved that since this was a matter of so great a consequence that it might be referred to a Committee of the whole House, which was agreed."<sup>64</sup>

The large number of references to the committee of the whole in the numerous diaries which have been collected to amplify the *Journal* for 1621, supplemented by the more definite references in the Book of Committees<sup>65</sup> for the same session,<sup>66</sup> assure us that by 1621 the committee of the whole had been incorporated as a regular part of the procedure of the Commons. Although matters of small importance were still referred to select committees, by this time the four different committees of the whole, meeting on different afternoons, give clear proof that much of the important business of the lower House was being transacted in that way. Besides, the House went often into committee about any specific matter in hand.

By 1624, the committee of the whole was fixed. Three committees of

<sup>59</sup> The motion was made, however, by Mr. Alford. *Commons Debates, 1621*, edited by Wallace Notestein, Frances Helen Relf, and Hartley Simpson (New Haven, 1935), II, pp. 23-24. <sup>60</sup> *Ibid.*, II, p. 24. <sup>61</sup> *D. N. B.*

<sup>62</sup> *Commons Debates, 1621*, II, pp. 65-66. "Sir Thomas Roe said that the committees [of the whole] were too great, so that whereas there were several businesses referred to several committees and all handled at once, now one business takes up the whole House." <sup>63</sup> *Ibid.*, II, p. 66. <sup>64</sup> *Ibid.*, II, p. 78.

<sup>65</sup> The Book of Committees is probably an official journal of the committees of the whole for this session. A contemporary diarist speaks of "two books kept by the Clerk, the one of business of the House, the other of the Committees of the whole House." *Commons Debates, 1621*, I, 96-97. <sup>66</sup> *Ibid.*, IV.



the whole house were named early in the session. On February 23, at the suggestion of Mr. Delbridge, the House agreed to set aside time every Friday and Monday afternoon, beginning at two, throughout the session for a committee on grievances.<sup>67</sup> It was also resolved, in accordance with Sir Robert Phelps' motion, that a committee of the whole house for courts of justice be authorized to sit every Wednesday.<sup>68</sup> Thursday afternoons were set aside for meetings of the committee of the whole on trade.<sup>69</sup> Later in the session, there were various meetings of the committee of the whole house to discuss foreign affairs, the continuance of statutes, subsidies, etc.; but the three committees named early in the session were the most important. Under the leadership of their respective chairmen, Sir Edward Coke, Sir Edwin Sandys, and Sir Robert Phelps—all leaders of the popular cause—the business of the House was transacted efficiently; reports were frequent, and the House seemed well content with the procedure which had rapidly developed since the late Elizabethan days.

By this time, nearly all important questions were referred to the committee of the whole house. The House was likely to lay down certain principles; the committee worked out the details or else authorized a sub-committee to prepare a definite plan. The requisite attendance at morning and afternoon sessions meant, of course, an increase in the business of all members. The privy councillors had less influence now than they had had in the select committee; legislation was being drafted by sub-committees, and a considerable new machinery was growing up in the House. The order of business was rearranged that more speed might be obtained. It was the pressure of public business that led to the new procedure in the House.<sup>70</sup> Parliament was no longer content with acting as a rubber stamp for decisions made in advance by the Crown. The new leadership was eager to initiate and formulate legislation. In order to do so, the Commons had to gain control of their own parliamentary processes.<sup>71</sup> One step in this direction, it seems clear beyond doubt, was the evolution of the committee of the whole house, which allowed greater freedom of discussion and released members of the House of Commons from the undue influence of Crown officials.

In summary, then, we may say that as the Commons began to take genuine initiative in legislation, the committee of the whole, with its sub-committees, furnished a far better center from which new bills could emanate than did the House itself. During the previous reign, the Privy Council had acted as a similar center for government initiative in legislation. Gradually, the Commons took more and more interest in new legislation. The appearance of the Elizabethan general committee shows the development of such interest. As that interest grew steadily greater

<sup>67</sup> *C. J.*, I, 671-72.

<sup>68</sup> *Ibid.*, I, 672.

<sup>69</sup> *Ibid.*

<sup>70</sup> Notestein, *The Winning of the Initiative*, pp. 34-41.

<sup>71</sup> *Ibid.*, p. 53.

in the reign of James I, and slowly turned into initiative on the part of the Commons in legislation, it was only natural that the center for this growing interest, the primitive general committee, should be turned into the all-powerful committee of the whole.

SYDNEY H. ZEBEL.

*New York University.*

**Some New Light on the Growth of Parliamentary Sovereignty: Wimbish versus Taillebois.** It is almost as difficult to read the thoughts of the past from the scattered dicta of the sixteenth century law books as to reconstruct a dinosaur from the fragments of a skeleton; yet many of these early cases illuminate important changes in legal and political affairs. The case of *Wimbish v. Taillebois*<sup>1</sup> is one of particular interest because of Chief Justice Montague's opinion, which casts some light upon a little known phase of the constitutional development by which the property rights of the individual were brought under the control of the state. In the early Middle Ages, the power of the king over private rights was weak; the notion that the subject's rights were inviolate was strong. During the Middle Ages, royal authority and parliamentary authority grew extensively, and by the sixteenth century king in parliament was able to seize church lands and transfer property rights by statute. Montague justified such transfers of property from one individual to another by applying the mediaeval theory of taxation by consent to out-and-out transfers of property by Parliament. Such a doctrine increased the power of Parliament greatly by placing property rights directly under its legislative authority. It therefore marks an important step in the growth of the theory of parliamentary sovereignty.

In seeking a precedent for such a doctrine, it was natural that Montague should turn to the parallel of taxation. As early as the thirteenth century, English kings had been granted taxes by assemblies of magnates; later, they received them regularly from more fully representative parliaments. Such taxation was thought of by certain lawyers as a free gift of individuals. A judge in the fifteenth century spoke of a subsidy as a "grant made by the spontaneous will of the people."<sup>2</sup> Another lawyer in the same case treated Parliament, when it granted a subsidy, as a "guild or corporation totally devoid of governmental aspect."<sup>3</sup> Taxation was not an

<sup>1</sup> Edmund Plowden, *The Commentaries or Reports of Edmund Plowden* (London 1816), I, pp. 38-60.

<sup>2</sup> The case of the Rector of Edington, quoted by T. F. T. Plucknett, "The Lancastrian Constitution," in *Tudor Studies*, edited by R. W. Seton-Watson (London, 1924), p. 165. Newton C. J. disputed an argument of Fray C. J. that a subsidy was one of the revenues of the high court of parliament and made him agree that it was a grant by the people.

<sup>3</sup> Plucknett described Markham's discussion of Parliament in these words; *ibid.*, p. 179.

act of royal will; it was a free gift. The tax was justified by the theory that all men who were taxed gave their consent in a representative assembly. This doctrine was an outgrowth of a dominant mediaeval notion—one of the commonplaces of constitutional history—that a subject's *iura* could not be touched without his consent. The doctrine of consent to the taking of property was worked out more fully in connection with taxation than with legislation. Although legislation dealing with private rights in a general way was a familiar process in the fifteenth century, such legislation was usually supplementary to the common law, serving to protect private rights more fully. Upon occasions, the common law was changed and private rights were attacked, but property rights were not normally infringed in Parliament by general laws.<sup>4</sup> Moreover, English mediaeval jurisprudence was deeply imbued with the notion of fundamental law, of which the law of property was held to be one of the chief branches.<sup>5</sup>

The reign of Henry VIII was one of startling innovations in the relation of government and property, as in so many other fields. The acts of the Reformation Parliament which transferred church lands to the king carried out a program which was in fact the spoliation of one estate of the realm by the king and a parliamentary majority. In other cases as well, the Reformation Parliament interfered with property, changed property law, and transferred lands by legislative fiat. All these acts violated the mediaeval principle of the sanctity of private right.

The ablest publicist in favor of expropriation of church lands, Christopher St. German, claimed for Parliament full arbitrary power to dispose of property. "It is holden," he wrote, "by them that be learned in the laws of this realm, that the parliament hath an absolute power, as to the possession of all temporal things within this realm, in whose hands soever they be, spiritual or temporal, to take them from one man and give them to another without cause or consideration. For if they do it, it bindeth in law and conscience."<sup>6</sup>

<sup>4</sup> For a summary of the important statutes in this period, see W. S. Holdsworth, *A History of English Law* (London, 1923), II, pp. 447-484. See also S. B. Chrimes, *English Constitutional Ideas in the Fifteenth Century* (Cambridge, 1935), pp. 192-214. Certain mediaeval continental lawyers had a clear conception of eminent domain and expropriation. Maitland quotes Decius as follows: "Decius, Cons. 250: a law may take away rights '*generaliter*' even '*sine compensatione privatorum*'; on the other hand, if this law does this '*particulariter alicui subdito*,' then it must be '*cum recompensatione*.'" See Otto von Gierke, *Political Theories of the Middle Age*, translated by F. W. Maitland (Cambridge, 1913), p. 179.

<sup>5</sup> See Sir John Fortescue, *De Laudibus Legum Angliae*, edited by Gregor and Amos (Cincinnati, 1874), pp. 239-240. See also Christopher St. German, *Doctor and Student* (Cincinnati, 1874), Chap. 2.

<sup>6</sup> Christopher St. German, *A Treatise concernyng the Division betwene the Spiritualltie and the Temporalltie*, Chap. ix, printed in *The Apology of Sir Thomas More, Knight*, edited by A. I. Taft (Early English Text Society, CLXXX, 1930), p. 228.

It is significant that St. German placed his arbitrary power in Parliament instead of in the king, as some Protestant theologians like Tyndale did, for St. German was a lawyer and one of the founders of the theory of parliamentary absolutism.<sup>7</sup> His statement, which is contained in a treatise against the temporal power of the clergy, illustrates how Protestants in the sixteenth century exalted the state in order to use it to attack Rome. St. German did not comment further on his remarkable proposition. In any case, his statement described the practice of the parliaments of Henry VIII.

It is not surprising that such a radical statement of Parliament's arbitrary power did not go unchallenged. Sir Thomas More wrote a long and withering attack on St. German's treatise, which he analyzed and refuted chapter by chapter. In the *Apology*, he forcefully denied the validity of confiscatory legislation. "By what right," he wrote, "may men take away from any man spiritual or temporal, against his will, the land that is already lawfully his own, that thing this pacifier<sup>7a</sup> telleth us not yet. Yet I have heard some good and wise and well learned men say, that all the world can never bring the reason that can prove it right. And as for my own part . . . if any man would give counsel to take any man's lands or goods from him, pretending that he hath too much or that he use it not well, or that it might be better used if some other had it, he giveth such counsel as he may well when he list and will peradventure often stretch forth a great deal further than the goods and possessions of spiritual men."<sup>8</sup>

Sir Thomas More was one of the outstanding advocates of the Catholic Church, but he was also Lord Chancellor, renowned for his legal wisdom. His flat denunciation of confiscatory legislation carries great weight as an expression of traditional legal thought. Because his book was addressed to the general public, not to a group of lawyers, he did not use a legal argument; but he asserted with great emphasis that St. German's proposal could never be proved right, and showed that such a radical legal theory would imperil all property. His warning was prophetic, for not only monastic lands which the anti-clerical party coveted, but the property of all men, came ultimately to be at the mercy of a parliamentary majority.

The legal principle of vested rights to which More appealed was no safeguard for the church against the determination of the king and his party to seize monastic property. For the time being, the arbitrary doctrine of St. German carried the day. The Act for the Dissolution of the

<sup>7</sup> See F. L. Baumer, "Christopher St. German," *American Historical Review*, Vol. 42 (July, 1937), pp. 631 ff.

<sup>7a</sup> "Pacifier" is More's scoffing name for St. German, who published his tract anonymously.

<sup>8</sup> More's *Apology*, p. 86.

Lesser Monasteries,<sup>9</sup> which gave the property of the lesser monasteries to the crown, was the first exercise of the power St. German claimed for Parliament. This transfer of property, as far as appears, was accepted by the courts without discussion, although it was a clear invasion of the rights not only of the monasteries but also of some of the grantees of the monasteries who were deprived by an *ex post facto* law. In proceeding against the greater monasteries, confiscation by statute was not attempted because many of the abbots sat in the House of Lords.<sup>10</sup> In 1546, the program of robbing the church was completed; the chantries, colleges, and free chapels of England were dissolved by statute and their possessions were vested in the crown.<sup>11</sup> Henry VIII was able to put through arbitrary statutes against the church, but he met with stiff opposition when he attacked lay interests. Attempts to levy forced loans were resisted.<sup>12</sup> The Statute of Proclamations was amended in Parliament so as fully to protect private rights and the common law from infringement by proclamation.<sup>13</sup> The Statute of Uses was twice rejected before it passed in 1536.<sup>14</sup> Although Henry was often checked when he attacked common law rights, he did score a number of victories. Upon two occasions the king's debts were cancelled by statute.<sup>15</sup> Several important changes in the land law, the Statute of Uses,<sup>16</sup> and the Statute of Wills<sup>17</sup> were put through. Of these statutes, the most interesting to us is the Statute of Uses, because it occasioned Montague's dictum on transfers of property. The statute was passed to prevent evasions of feudal dues and legal responsibility which the older law of uses facilitated. Under the older practice, land in use belonged to the feoffee to uses who was seised of the land; the right to enjoy the land belonged to the *cestui que use*. The statute transferred the title of the land from the feoffee to uses to the *cestui que use*.

All these acts stand out in marked contrast to the attitude of certain mediaeval English lawyers. By a consistent and continued policy, the king had coöperated with a majority of Parliament to attack vested rights. Such parliamentary radicalism stood in need of a new theory of sovereignty by which to justify the control of property by Parliament. The opinion of Chief Justice Montague in *Wimbish v. Taillebois* provided a line of thought for such a doctrine and fitted in with English precedents.

<sup>9</sup> *Statutes of the Realm*, edited by A. Luders, J. Raithby, *et al.*, (London, 1810-28), III, p. 575 ff.

<sup>10</sup> J. R. Tanner, *Tudor Constitutional Documents, 1485-1603* (Cambridge, 1922), p. 63. <sup>11</sup> *Statutes of the Realm*, IV, pp. 24 ff.

<sup>12</sup> A. F. Pollard, *Henry VIII* (London, 1913), p. 165.

<sup>13</sup> E. R. Adair, "The Statute of Proclamations," *English Historical Review*, Vol., 22 (1917), pp. 34 ff. *Statutes of the Realm*, III, pp. 726 ff.

<sup>14</sup> Holdsworth, *op. cit.*, IV, pp. 450-458.

<sup>15</sup> *Statutes of the Realm*, III, pp. 315, 970.

<sup>16</sup> *Ibid.*, III, p. 539. <sup>17</sup> *Ibid.*, III, p. 744.

The case of *Wimbish v. Taillebois* was argued before all the justices of the Common Bench in 1553. The case can be summarized briefly as follows.<sup>18</sup> George Wimbish and his wife Elizabeth sued Elizabeth Taillebois for trespass on land which Elizabeth Taillebois claimed as her property. The land in question was parcel of the manor of Golthough, which had been owned by George Taillebois, the husband of Elizabeth Taillebois and grandfather of Elizabeth Wimbish. George Taillebois granted this manor to a number of feoffees—among them Thomas Wolsey—to the use of himself and his wife in special tail. Some time thereafter he died. The serjeant for Wimbish argued that Elizabeth Wimbish, who was the next heir after the widow Taillebois, was the rightful owner of the land because the widow Taillebois defeated her title by being party to a fraudulent suit by which the land was transferred to a cousin with intent to defeat the title of the lawful heirs. By being party to such a recovery by cosin, the widow was deprived of her estate in accordance with a statute of Henry VII.<sup>19</sup>

Justices Molineux, Hales, and Brown gave opinions on the case in which they discussed the forms of the pleadings and the law of cosin, but they kept closely to the technical details of the case. Chief Justice Montague, on the contrary, went out of his way to deliver a dictum upon the nature of the transfer of property by the Statute of Uses. In order to show that the present case fell clearly within the meaning of the statute of 11 H. 7, the Chief Justice pointed out that the Statute of Uses transferred the ownership of land in use from the feoffee to uses to the cestui que use. Then he spoke of that transference of land in some detail. He pointed out that before the Statute of Uses, land in use was in the possession of the feoffee to uses.

"And when the statute of 27 H. 8 was made," he continued, "it gave the land to them that had the use. It is to be seen then, who shall be adjudged in law the donor after the execution of the possession to the use. And, Sir, the parliament (which is nothing but a court) may not be adjudged the donor, for what the parliament did was only a conveyance of the land from one to another, but a conveyance by parliament does not make the parliament donor; but it seems to me that the feoffee to uses shall be the donors, for when a gift is made by parliament every person in the realm is privy to it and assents to it, but the thing shall pass from him that has the most right and authority to give it. As if cestuy que use and his feoffees join in a feoffment it shall be said the feoffment of the feoffees, for they have the greatest authority to give it. And if a tenant for life and he in reversion join in a feoffment, it shall be judged the livery of the tenant for life, because he has the greatest authority to do it. And so if one who is seised in fee of land and another who has nothing in it join in a feoffment, it shall be said the feoffment of him that has the right and the confirma-

<sup>18</sup> Plowden, *op. cit.*, pp. 38-60.

<sup>19</sup> 11 H. 7, cap. 20.

tion of the other. So here it shall be said the gift of the feoffees by parliament and the assent and confirmation of all others. For if it should be adjudged the gift of any other, then parliament would do a wrong to the feoffees, in taking a thing from them and making another a donor to it. And, Sir, in the case of the Rector of Edington, 19 H. 6, where the king had granted to the Rector and his brethren that when a tithe was granted to him by the clergy they should be discharged and afterwards a tithe was granted by the clergy in their convocation, there it was held by the better opinion that the Rector should be discharged by the said grant of the king, notwithstanding that he was adjudged in law one of the convocation, and as such one of the grantors, for the common law saith that none shall be damnified by such special (*sic*)<sup>20</sup> grant by parliament. And therefore the writ of right patent in London was not taken away by the Statute of Westminster 2, cap. 1, De Donis Conditionalibus, but it remaineth to this day and the demandant shall make his protestation to sue in the nature of a formedon in descender as he shall in other real actions there. So that acts of parliament will not prejudice any. And here the land is by the act of parliament removed from the owners, that is to say the feoffees, to the cestuy que use, and the statute would do a wrong if it did not judge them to be the donors, for they have the greatest authority to give it, and the parliament is only a conveyance, and therefore it shall be adjudged the gift of the feoffees by parliament, and so the gift of the feoffees who are seised to the use of the husband, and then within the words of the second disjunctive sentence of the statute of 11 Hen. VII."<sup>21</sup>

All the judges held that the case was within the words of the statute of 11 H. 7, and they agreed that the heir might enter immediately in the life of the tenant in tail; but no judgment was given in our record of the case.

The opinion of Chief Justice Montague was not influential. It was referred to with approval by one of the judges in Coke's *Reports*,<sup>22</sup> but I have found no other reference to it. Nevertheless the opinion is of great interest because it illustrates a stage in the growth of parliamentary sovereignty. Its argument, which seems so unnatural to us, reveals the gulf which separates mediaeval political theory with its emphasis on justice and private rights from the modern political theory of an omniscient sovereign state. This opinion is one of the stepping stones across the gulf, but it lies on the earlier side, and Montague speaks the language of the mediaeval private law.

Montague viewed a transfer of property by general statute as a conveyance of land made by each individual owner and registered in the high

<sup>20</sup> The French text of Plowden's Commentaries (1648, p. 59), reads "per tiel general graunt per parliament." 'General grant' fits the sense of the passage.

<sup>21</sup> Plowden, *op. cit.*, edition of 1816, Vol. I, pp. 58-9.

<sup>22</sup> Sir Edward Coke, *Reports* (1777), Vol. I, p. 41b.

court of parliament. No doubt he was comparing it to a conveyance registered in the Court of Common Pleas. He argued that Parliament as a corporate body—Parliament “which is nothing but a court”—had no authority to take property from one man and give it to another. On the contrary, he insisted that the transfers of property were authorized separately by the individual owners. He seems to have had no concept of the king-in-parliament acting as state sovereign, and thus he ignored the problem of a conflict between private right and public authority. It may be suggested that he avoided the problem of such a conflict because if the transfers had been viewed in such a light the weight of mediaeval precedent would have protected private rights against the interference of public authority. Thus Montague did not look upon the transfer as an act of government. Perhaps he sensed that the best way to get over an obstacle was to go around it. He made use of the mediaeval doctrine of Parliament’s rôle in taxation and applied it to the present case.

In the field of taxation, as we have seen, some mediaeval lawyers had evolved a theory of the nature of Parliament’s power. Taxation was a free and spontaneous gift of the people to the king. It was not an act of government. In line with this theory, Montague showed how the power of Parliament, when it dealt with property, arose from its representative character, so that its acts were binding because they were the acts of all. Of course a tax on property is a much less drastic thing than the taking of the entire property. In one case, Parliament takes a small portion; in the other, it takes all. Stretching the doctrine of taxation to include the transfer of property was a tremendous expansion of Parliament’s power, and seriously weakened the rights of the owner.

Although such was the outcome of his doctrine, the Chief Justice was very conscious of the sanctity of private rights. It is interesting that he referred to the case of a Rector of Edington, a fifteenth-century case in which the question arose whether a special grant by the king to the Rector exempting him from a tithe voted in convocation would excuse him from a later grant in convocation. One of the arguments of Markham, the serjeant for the Rector, is of especial interest. He said that Parliament was a corporation, and applied the private law of corporations to the case by affirming that the members of Parliament were not bound in their private capacity by the act of the corporation.<sup>23</sup> Thus he claimed that the special

<sup>23</sup> Plucknett, *op. cit.*, pp. 162–8. Two points of constitutional law are involved in this case: (1) Did an act of a representative body defeat the act of the king? (2) Did the Rector, being in law a member of convocation through his proxy, surrender his exemption when the later grant was made in convocation? The lawyers and the judges alike dealt with these questions as though they were questions of private law. The attorneys for the king, desiring to annul the exemption, argued that, having received an exemption from the king, the Rector as a member of convocation granted it back to the king. Furthermore, they said that the Rector was estopped



grant made by the king to the Rector was not defeated by the act of convocation. The decision is not given in our record of the case, but it is interesting to see that as late as the reign of Edward VI a judge believed that the view which held that an act of Parliament or an act of convocation could not invalidate a private agreement between the king and one of his subjects was the "better opinion." Nevertheless, Montague's treatment of Parliament was quite different from that of Markham. Although Montague agreed with Markham's conclusion that the Rector's exemption was valid, he rejected his argument that Parliament was a corporation in which the members were bound in accordance with the rules of corporation law. On the contrary, he treated Parliament as made up of individuals who were bound as individuals.

Montague's reference to this case shows how strong was the feeling that the private rights of the individual transcended the authority of any other agency. The acts of the Reformation Parliament, however, treated private property, in so far as it was monastic, in an arbitrary manner and controlled the property of laymen by statute; and we have seen that St. German stated categorically that Parliament had an absolute power over property.

It was possible to reconcile by a legal fiction the action of Parliament with the older sentiment of the inviolability of private right. Montague said that the individual gave his own land himself, and that Parliament had no more part in the act than a witness to the transaction would have. The legal fictions that the decision of the majority was the decision of the whole body, and that every person in the realm was present in Parliament, had long been familiar to English lawyers. If these fictions were taken at face value, it was possible to argue that each individual concerned by the Statute of Uses gave his property freely by his own authority and to ignore the fact that some individuals were bitterly opposed to the transfer. Actually, Parliament, by its sovereign authority as representative of the people, was overriding private rights, but Montague did not see the action in this light. He said that the gift was not made by Parliament as a branch of the

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by the act of convocation from pleading the charter of exemption. Chief Justice Hody agreed with these arguments. Markham, serjeant for the Rector, reversed the estoppel argument by saying that the king was estopped from pleading the act of convocation. Furthermore, he compared Parliament to the commonalty of London. "Let us suppose," he said, "that a member of the commonalty of London is disseised of his free tenement by a stranger and that then the Mayor and the commonalty release the disseisor, then the release made by all the commonalty will not bar him from his particular inheritance, for as much as he does not claim it as one of the commonalty but as a private person . . . So here, although the Rector was party to the general grant of the fifteenth yet the special grant made to him alone is not defeated thereby unless there are words to that effect." Thus Markham seems to admit that Parliament could annul the Rector's exemption by special words. Plucknett, p. 166.

government, but by the owners who were parties to the statute. "For when a gift is made by Parliament," he said, "every person in the realm is privy to it and assents to it, but the thing shall pass from him that has the most authority and right to give it." By accepting without question the fiction that every subject assents to a statute, Montague overlooked the problem of representation. He made no mention of the relation of a member of Parliament to his constituent and ignored the whole question of the nature and extent of the powers delegated by a constituent to his representative; but his assertion that a subject was privy to Parliament's action implied that a member of Parliament had full power of attorney.

The closing words of this passage of the opinion are significant because they show how Montague's legal fiction enabled him to dismiss with a wave of the hand the question of a wrong done to the owners of private property. The transfer, he said, "shall be adjudged the gift of the feoffees by Parliament and the assent and confirmation of all others. For if it should be adjudged the gift of any other, then Parliament would do a wrong to the feoffees." Montague was making use of the old formulas to justify an act which in fact destroyed their meaning. The care with which he avoided disturbing traditional concepts suggests that his line of argument by which he extended the scope of the doctrine of consent was a novelty. Although he was speaking the language of More's "good and wise and well learned men," he advanced a legal theory which could be used to give Parliament, in St. German's words, "an absolute power as to the possessions of all temporal things within this realm . . . to take them from one man and give them to another." The legal fiction that the act of the king and Parliament was the free act of every Englishman might deliver every subject's property into the hands of the king and a parliamentary majority. Thus the independence of the individual was curbed and his privileges were brought under the control of the will of the community. The doctrine of individual consent which had first been used to justify and legalize taxation was now called upon to legalize the regulation of private property.

Montague's argument had the merit of fitting in with the precedents of the common law and at the same time providing a means by which the common law tradition could be adapted to the needs of the modern state. There is no proof that he had any direct influence upon later writers about parliamentary sovereignty, but this case gives us a chance to see an unknown judge wrestling with the problems of modern sovereignty at an early date before lawyers were aided by Bodin's conceptual tools. Clumsy and sophistical his thought may seem to us, but it points the way that greater theorists were to travel in the future. Extension of the notion of consent from taxation to the regulation of property was a long step toward the omniscient Parliament that Blackstone glorified.

EDWARD T. LAMPSON.

*Trinity College.*

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

At the 1940 meeting of the American Political Science Association, the Committee to Nominate Officers for 1942 was authorized (1) to follow the procedure of the committee for 1941 in canvassing the membership of the Association for suggestions for nominations, and (2) to publish its list of nominations in the October REVIEW. The committee (consisting of Robert R. Wilson, chairman, Charles G. Haines, Roscoe C. Martin, Roger H. Wells, and Harold Zink) reports the canvass duly made, and offers the following list of nominations: for president, William Anderson (University of Minnesota); for first, second, and third vice-president, respectively, Robert E. Cushman (Cornell University), Frederick A. Middlebush (University of Missouri), and James Hart (University of Virginia); for members of the Executive Council, Miss Keith Clark (Carleton College), Thomas I. Cook (University of Washington), Marshall E. Dimock (U. S. Department of Justice), James W. Fesler (University of North Carolina), and Max Lerner (Williams College). It may be added that, under a constitutional amendment adopted last year, the secretary-treasurer is now elected by the Executive Council rather than by the Association.

Dr. Herman Finer, of the London School of Economics and Political Science, is visiting professor of political science at the University of Michigan during the first semester of the current academic year.

Professor Peter H. Odegard, of Amherst College, has been elected to the board of directors of the Institute for Propaganda Analysis.

Dr. Wilbert L. Hindman, formerly of Colgate University, has been appointed assistant professor of political science at the University of Southern California, replacing Dr. Frank H. Jones.

Dr. Robert D. Leigh has resigned the presidency of Bennington College and has become a temporary member of the School of Economics and Politics of the Institute for Advanced Study at Princeton.

At the University of Michigan, Professor J. Ralston Hayden has been appointed to the James O. Murfin professorship of political science.

Professor David P. Barrows, of the University of California, has been appointed an adviser to Secretary of War Stimson. At the University, he is offering a new course entitled "Warfare and the Modern State."

After a year at Northwestern University, Professor Joseph P. Harris has rejoined the faculty of the University of California at Berkeley.

Professor John A. Fairlie, who recently retired at the University of Illinois, has been appointed visiting professor at Ohio State University for the winter and spring quarters of 1942.

At the University of Illinois, Dr. Francis G. Wilson has been advanced from associate professor to professor and Drs. Valentine Jobst III and Clyde F. Snider from associate to assistant professor.

Professor James W. Fesler has a year's leave from the University of North Carolina and is serving as analyst assistant to the secretary of the Office of Production Management.

Professor Manley O. Hudson, of the Harvard Law School, and judge of the Permanent Court of International Justice, has been appointed Anna Howard Shaw lecturer at Bryn Mawr College. In February and March, he will give six public lectures there and will participate in the Haverford-Bryn Mawr joint seminar.

Professor Raymond McKelvey, of Occidental College, has been elected president of the Pacific Southwest Academy.

Dr. Gilbert G. Lentz has resigned his position with the Illinois Legislative Council as assistant research director to accept an assistant professorship and the directorship of the public service training program at Occidental College.

Dr. Henry W. Wiens, who during the past year represented the Menonite Central Committee at Lyons, France, has been appointed instructor in political science at Santa Barbara State College.

Dr. Bennett Rich and Mr. John J. Dautrich have been added to the political science staff at the University of Pennsylvania.

Dr. Edgar B. Cale, instructor in political science, has received the Penfield fellowship award at the University of Pennsylvania and will spend the coming year in travel and study in South America.

Professor Charles H. Titus, of the University of California at Los Angeles, is now serving as public relations officer of the 4th Army, with headquarters at the Presidio in San Francisco. Mr. Earl W. Hanson, of the University of Illinois, has been added to the department staff at the University.

Dr. Fred V. Cahill, who received his doctor's degree at Yale University in June, has been appointed instructor in political science at the University of Oregon.

At the University of Missouri, Dr. Chesney Hill has been promoted to the rank of associate professor.

Mr. Paul L. Beckett, formerly research associate in the Bureau of Governmental Research at the University of California at Los Angeles, has accepted a position as executive-secretary of Town Hall, a downtown Los Angeles civic organization patterned after the Commonwealth Club of San Francisco.

Dr. Richard W. Van Wagenen, who received his doctor's degree at Stanford University in June, has been appointed instructor in government at Yale University.

Hobart College and William Smith College (affiliated institutions) announce the appointment of Mr. Seymour Dunn, recently research associate in political science at Cornell University, as assistant professor of political science.

Dr. Wallace Mendelson, recently of the University of Missouri, has received an appointment at the University of Illinois.

At New York University, Dr. Ray F. Harvey has been made an assistant professor of government in the Washington Square College and in the graduate school, and Dr. William J. Ronan has been made an assistant professor of government in the Washington Square College and assistant director of the graduate division for training in public service.

During the current academic year, Bryn Mawr College and Haverford College are offering a joint graduate seminar dealing with the political, legal, and economic problems of world reconstruction. The seminar is in charge of Professors Benjamin Gerig of Haverford and Helen Dwight Reid of Bryn Mawr.

At the University of Tennessee, where Dr. Kenneth O. Warner has become chairman of the department of political science (lately separated from history), Professor Lee S. Greene will henceforth devote full time to teaching, although continuing as a consultant to the T. V. A. Other members of the newly organized department are Drs. Paul K. Walp and Ruth Stephens.

A grant by the Carnegie Corporation of New York has been awarded to Dr. Robert M. W. Kempner, Institute of Local and State Government, University of Pennsylvania, for research in National Socialist administration, with special reference to the world-wide police system. Dr. Kempner has served as special consultant in the same field to federal and state authorities during recent months.

The members of the staff in history and political science at Iowa State College have issued a series of eight bulletins on "The Challenge to Democracy." Professor John A. Vieg writes on "Democracy on Trial," and Professor H. D. Cook on "Toward a Better Public Administration."

The twenty-first annual meeting of the National Council for the Social Studies will be held at Indianapolis November 20-22. Professor Howard White, of Miami University, is chairman of a committee which is arranging a symposium on civic education to be sponsored jointly by the Council and the National Foundation for Education.

Federal, state, and local governmental personnel workers will gather in Jacksonville, Florida, October 27-30, for the thirty-third annual meeting of the Civil Service Assembly of the United States and Canada. The chief topic for discussion during the four-day meeting will be the effect of national defense activities upon the general field of public personnel administration.

Since February, 1940, Professor Helen Dwight Reid, formerly of the University of Buffalo, has been taking the place of Professor Charles G. Fenwick of Bryn Mawr College. Professor Fenwick is spending most of his time in Rio de Janeiro, serving as the United States member of the seven-man Inter-American Neutrality Commission which represents the joint interests of the twenty-one American republics during the war. In the summer of 1941, Professor Reid was a member of the Fourth Conference on Canadian-American Relations at Queens University, was the Latin-American expert at Lehigh University's Institute of Politics, and gave addresses at the Institute of Public Affairs at Charlottesville and at the Institute on World Organization at American University. Professor Fenwick will be in residence at Bryn Mawr during a portion of the present year.

A National Opinion Research Center has been set up at the University of Denver, sponsored by the University and the Field Foundation of New York. As listed in the announcement, the purposes of the new Center are to establish the first non-profit, non-commercial organization to measure public opinion in the United States, to make available to officials, legislators, and non-profit organizations a staff of experts in public opinion measurement, to analyze and review the results of other surveys, to discover, perfect and test new methods and techniques for the management of public opinion, and to provide the University with a new graduate department devoted to the new science of public opinion measurement. Mr. Harry H. Field, associated with Dr. George Gallup for six years, will be in active charge.

The establishment of an Institute of Public Service at the University of Chicago, making special training in various aspects of government available to the 125,000 public officials and public employees in the Chicago metropolitan area, was announced during the late summer. Opened in October, and conducted at the University's downtown center, the Insti-

tute will flank the professional courses in business and in the Institute of Statistics which the University inaugurated a year ago to meet the growing need in business and government for statistical fundamentals. A certificate of public administration will be awarded students satisfactorily completing an approved course, providing they have attained a bachelor's degree or an acceptable equivalent in terms of public service.

The U. S. Department of Justice has announced, and the Immigration and Naturalization Service (lately transferred to that Department) will sponsor, a liberally financed program of education in citizenship, aimed primarily, but not exclusively, at the alien population of the country. The program will supplement and amplify such projects now in operation in most states and will establish projects where they are not now going on; and it will operate largely from state offices of a recently created National Advisory Board, with only a small supervisory force stationed in Washington. Included in the five-man National Board are Drs. Marshall E. Dimock, associate commissioner of the Immigration and Naturalization Service, and Henry B. Hazard, director of research, information, and education for the Service; and the general director will be Dean William F. Russell, of Teachers College, Columbia University. On invitation of the Board, the American Political Science Association is participating through a counseling committee which was in process of formation when this issue went to press.

The Committee on the British Sessional Papers, a special committee of the Committee on Historical Source Materials of the American Historical Association, has made an agreement with the Readex Microprint Corporation of New York to issue a microprint edition of the British House of Commons Sessional Papers. The agreement has the unanimous endorsement of the Executive Committee of the American Historical Association, and by it the Readex Company will issue the nineteenth-century volumes of the collection, more than 5,800 in number, at a price of \$5,000 per set, providing a minimum of twenty-five subscriptions or their equivalent can be obtained. This price is about one-half of what it would be if the volumes were issued in microfilm; and the original volumes, were they obtainable, would cost upwards of \$20,000. The set will be collated to insure completeness and edited as to arrangement to conform to the official binding and foliation. It is planned to issue the volumes for the first thirty years of the nineteenth century by next summer, and the remaining volumes of the century will be issued in the course of a four- or a nine-year period, depending on whether or not a Foundation can be induced to assist libraries with restricted budgets. For further information concerning the project, address Edgar L. Erickson, 317 Lincoln Hall, University of Illinois, Urbana, Illinois.

Two months before his death from a heart attack on August 4, Dean **Charles Wooten Pipkin** said in an address to the graduate student body of Louisiana State University: "The dynamic thought of scholarship is to create a humane society on earth. The long, last quiet thought of all of us is that the good life of man can be achieved." It was a revealing pronouncement of his educational creed and a constantly recurring motif in the voluminous writing which he left. Dean Pipkin was born in Little Rock, Arkansas, on November 4, 1899. He received his A.B. degree from Henderson-Brown College in 1918, and his M.A. from Vanderbilt in 1919. After three years as a graduate student at Harvard, he was awarded a Rhodes scholarship and received the degree of D. Phil. from Oxford University in 1925. In the same year, he was appointed to the government faculty of Louisiana State University, in which department he taught courses in international politics until his death. This service was interrupted twice—during 1929–30 he studied at the Sorbonne as a Carnegie fellow in international law, and during 1931–32 he served as visiting professor of social legislation at Columbia University. At various times he taught during summer sessions at the University of Texas and the University of Virginia. In 1931, the Louisiana State University graduate program was reorganized and Dr. Pipkin was named the first dean of the Graduate School. From that time forward his primary concern was the development of graduate study and scholarly activity in his own institution and throughout the South. Testifying to his success in this part of his career are a number of publications, activities, and causes which he espoused. Among these are the joint editorship of the *Southern Review*, publication of *The Duty of the Educated Mind* (1936), *A Survey of Graduate and Research Work in the South* (1937), and service on a number of important educational committees and conferences, including the Commission on Improvement in Graduate Instruction and the presidency of the Conference of Deans of Southern Graduate Schools. At the time of his death he had just completed a further analysis of graduate work in the South in collaboration with A. B. Bonds. Dr. Pipkin's principal publications were issued before he was charged with administrative duties. His published works include *The Idea of Social Justice* (1927); *World Peace is Not a Luxury* (1927); *Social Politics and Modern Democracies* (2 vols., 1931); and *Social Legislation in the South* (1934). He was a member of the Executive Council of the American Political Science Association from 1927 to 1930, served as a member of the Board of Editors of the *American Political Science Review* from 1930 to 1934, was a member of the Executive Council of the American Society of International Law from 1937 until his death, and at one time or another was a member of the American Commission at Geneva, of the United States Department of Justice Research Council on Effects of the Eighteenth Amendment, the President's Con-



ference on Home Building and Home Ownership, the White House Conference on Social Legislation, the Social Science Advisory Committee of Twelve in the United States Department of Agriculture, Industry Committee Number Two of the United States Department of Labor, the Southern Regional Committee of the Social Science Research Council, the National Committee of the Council on Southern Regional Development, and the President's National Emergency Council Committee on Southern Economic Conditions. In the death of Charles W. Pipkin, students and faculty of Louisiana State University lost a kindly and generous counselor, Southern education lost one of its most vigorous supporters, and the political science profession lost one of its most brilliant members.

## BOOK REVIEWS AND NOTICES

*From Luther to Hitler; The History of Fascist-Nazi Political Philosophy.*

By WILLIAM M. MCGOVERN. (Boston: Houghton Mifflin Company. 1941. Pp. ix, 683. \$4.00.)

This book essays a worth-while and difficult task—an analysis of the ideological roots of fascism. Professor McGovern's thesis is that the ideology of the Nazi and Fascist leaders is merely a popularization of a political tradition which has been developing for four hundred years; thus a knowledge of this tradition may enable us to understand "the true nature" of fascism and to predict its future developments. This thesis may startle those who emphasize the fascist repudiation of Western traditions; but the author establishes a *prima facie* case for it by defining fascism as authoritarianism plus *étatisme* and pointing out that authoritarian and *étatist* political philosophies have been common in Western thought.

Most of the book is devoted to analyses of various schools of *étatist* and authoritarian theory. Part I deals with early modern defenses of absolutism and the conservative reaction to the French and American revolutions. Part II traces the idealists from Kant and his "disciples" Green and Carlyle through Fichte and Hegel. Part III analyzes other movements which influenced fascist ideology: traditionalism, irrationalism, "Social Darwinism," eugenics, and racialism. Part IV discusses the political philosophies of Italian Fascism and National Socialism.

Parts II and III contain much useful material not easily found in other secondary sources, but it is difficult to keep main lines of development easily in mind. The reviewer cannot agree with the editor of the series that the inclusion of "phases of thought that are not altogether apposite to the main purpose gives the book additional value." There are several surprising omissions. Machiavelli and the early *raison d'état* tradition are ignored; the influences of German romanticism and socialism are not separately analyzed. Pre-Nazi synthesizers like Carl Schmitt and Moeller van den Bruck are not mentioned.

To establish the author's thesis, it would be necessary to show that the fascist type of *étatisme* and authoritarianism derives from the same premises as previous *étatist* and authoritarian philosophies. But his analysis of fascism shows that, while it rests directly on irrationalism and "Social Darwinism," its premises have little in common with those of the idealists and traditionalists, and still less in common with those of earlier absolutists. Failure to distinguish clearly between basic assumptions and the doctrines deduced from them enables him to suggest a degree of continuity which dissolves upon closer examination. For example, although on page 617 "we find the Nazis quietly taking over the basic assumptions of . . . the idealists," on page 620 the Nazis reject metaphysical idealism and the

idealistic interpretation of history, and on page 624 "it is obvious that the Nazi brand of idealism differs from all the older theories of idealism" in being based on irrationalism and "Social Darwinism." To this reviewer, the difference between rationalist and irrationalist premises seems vitally important.

The analysis is often confused by the mechanical classifications which the author employs. To say, for example (p. 12), that democracy is simply majority rule, without any necessary connection with individualism, is to deprive this concept of any theoretical content. Professor McGovern also tends to assume that any idea that now supports fascist theory must have been at least "semi-étatist" or "semi-authoritarian" in whatever context it first appeared. What he calls "semi-étatism" in Green, for example, is in fact that recognition of the necessary interplay between individual and community which present-day liberals are rightly attempting to integrate with liberal respect for individual rights.

Another source of confusion is the use of ambiguous generalizations which suggest interpretations contradicted in the more detailed discussions. For example, on page 131 we read that "in each and every case the spread of idealist doctrines . . . coincided with the spread of belief in *either étatism or authoritarianism*—very frequently with the spread of belief in *both*. . . ."; on page 133 we find Kant, Green, and Carlyle classified as "semi-étatists and semi-authoritarians," who unconsciously served as "the advance guard" of fascism by breaking down the resistance of their own disciples to the later attack of the "thoroughgoing étatists and authoritarians"; on page 155 Mr. Lindsay and Mr. Barker are introduced as outstanding present-day idealists. One might fear that these scholars are now unconsciously undermining British democracy; but since Professor McGovern's detailed analysis of Kant and Green reveals them as pretty good liberals after all, we may perhaps still have confidence in Mr. Lindsay and Mr. Barker.

JOHN D. LEWIS.

*Oberlin College.*

*Rousseau and Burke.* BY ANNIE MARION OSBORNE. (New York: Oxford University Press. 1940. Pp. 272. \$3.75.)

Rousseau and Burke are usually thought of as implacably opposed to each other. Miss Annie Marion Osborne argues that the contrary is really true; that on the fundamentals of their thought the two writers are at one. She holds that the differences between them lie rather in their method of thinking and in the presentation of their thought.

This is a challenging thesis, and Miss Osborne has achieved considerable success with it. She has argued it ably. Yet it seems to the reviewer that she has stated her contention in stronger terms than the facts justify,

although this is very much a matter of evaluation. Religion was at the very foundation of Burke's political ideas, but with Rousseau religion was not a basic notion that gave shape and color to the whole of his thought; it was brought in rather as a support for his views. Burke was concerned with liberty, but with Rousseau liberty was a passion. These are differences of degree, to be sure; but such differences can be as significant as differences in kind. Still more important are the ideas on which there is basic disagreement. Burke believed in the wisdom of our ancestors, but Rousseau was no prisoner of prescription. Rousseau stood for equality, opposed privilege, and bitterly attacked the property system of his time. Burke stood essentially for inequality, defended the privileged aristocracy, and strongly supported the property order of his day. Rousseau was above all the champion of popular sovereignty and of self-government; Burke was the uncompromising opponent of these ideas. Miss Osborne is aware, of course, of these differences, but she does not attach a great deal of weight to them. Nevertheless, in spite of what seems an over-statement of her thesis, we are indebted to her for bringing out the common elements in the thought of Rousseau and Burke, and for showing the conservative side of Rousseau. Both of these things needed doing.

*Rousseau and Burke* is an historical study. Nowhere is this more clearly shown than in the chapter on the General Will. Miss Osborne describes the General Will and Rousseau's notions of the state more or less as Rousseau would have described them had his mind been free of paradox and interested in consistency. No account has been taken of the criticism that has been made of these doctrines since Rousseau wrote. There is no recognition, for example, of the criticism of Hobhouse, Ginsberg, Laski, and Carritt. Either the chief criticisms of these writers should be met or an acceptance of them shown. At one or two places in her text, Miss Osborne seems aware that Rousseau's doctrines cannot be taken at their face value, but for the most part she writes about them as if they were true descriptions of reality, and as if they had enabled Rousseau to solve important political problems. Surely the clarity of our thinking is not advanced by speaking of the state as a moral being with a life of its own; nor is it true, as Miss Osborne thinks it is, that Rousseau has solved the problem of political obligation through his notion of the General Will. Carritt, in his *Morals and Politics*, has shown that in the last analysis a man's willingness to obey, in Rousseau's view, rests on self-interest, which is to say that there is no obligation whatsoever, and that the problem is not solved but left where Hobbes left it.

In her preface, Miss Osborne says that her special purpose in writing on Rousseau and Burke was to show how their thought applies to modern times, but this purpose is not carried out to any considerable extent. Miss Osborne also says in her preface that the main problem of politics is the

dominance of the state. Surely the main problem is how to stop the Nazi tyranny, the tyranny of a party and of an ideology. And if this is thought of as a temporary problem, then the important long-term one would seem to be twofold: how to organize our economy so as to provide for an adequate standard of living, and, at the same time, maintain our essential liberties; and how to secure an effective international system so that world wars will not be fought every generation.

But these criticisms are minor, and have little bearing on the main body of the book. As we have indicated, the volume is devoted largely to historical analysis. Next to showing what Rousseau and Burke had in common and the conservatism of Rousseau, the chief virtue of Miss Osborne's work is her portrayal of the historical background of these two writers. She has done an admirable job in revealing the intellectual roots of Rousseau and Burke, tracing the origins of their thought back to the seventeenth century.

BENJAMIN E. LIPPINCOTT.

*University of Minnesota.*

*Marxism; Is It a Science?* By MAX EASTMAN. (New York: W. W. Norton and Company. 1940. Pp. 394. \$3.00.)

Of all American intellectuals with an intimate contact with Marxian thought, Max Eastman represents the longest span of such mental experience as well as the most penetrating thinking and observation, the latter covering many years of residence in Moscow. Regardless of the emotional impelling forces which have brought many splendid minds into the Marxian fold, Eastman found in Marxism above all the answer to his quest for a thoroughgoing science of history and of social institutions. But, unlike other intellectuals who permitted themselves to be so bedazzled by the blinding light emanating from the Holy of Holies of the Marxian temple as to produce an intellectual acquiescence in the dogmas of the new religion, Eastman not only was able to perceive the large ingredient of animistic theology in the Marxian system of thought, but also proved emotionally capable of accepting this perception. In this he differed radically from his friend Leon Trotsky, to whom he devotes Part VII of the present volume under the heading "Trotsky Defends the Faith." Eastman sees no reason why energetic action to bring in a new system must depend upon a faith that the deity of history is watching over these builders of the future and has unalterably underwritten their final success. At one time, Eastman felt convinced that Lenin merely posed as a Marxian in the theological sense Marx inherited from Hegel, but was in actuality a scientific engineer concerned, not with prophecies, but with builder's blueprints, analyses of the building material to determine plasticity or refractoriness, and the related worries of the practical engineer. During that

phase, Lenin's engineering was to him one of universal applicability and the building material for the Lenin structure equally available in all countries that had undergone the capitalist transformation.

It is puzzling to the reviewer why such a brilliant man as Eastman, to whom philosophy and history are equally open books, was unable to discover that Lenin's engineering feat in Russia, far from being one of the wonders of human achievement, was in reality a mediocre accomplishment. In Russia, for historic reasons, the communist social engineer found himself in a position to work his will upon an ultra-passive community. The Russia of 1917 issued from an historic mold vastly different from the one which has shaped the Western nations. Russia missed several shaping influences of decisive importance such as a genuine feudalism with its historic deposit of a landed gentry with an effective will to power, and the municipal stage with its guilds and companies serving as the cradle of a vigorous middle class. In addition, Russia's peasantry, nurtured in the institution of collective land ownership under the "mir," and therefore most unlike the peasantries of the Western countries, not only offered no resistance to the abolition of capitalism, but was impelled by its land hunger to side with Lenin. Finally, Russia's industrial working class, deprived of the protection of trade unionism and effective labor legislation, was a veritable tailor-made proletariat in the Marxian sense, as contrasted with Germany's working class, which, in the critical years 1918-20, arrayed itself under its trade union leadership on the side of conservatism. In brief, Lenin, while he operated upon Russia, dealt with ultra-plastic stuff; but when he tried the same engineering plan upon Western Europe, he met instead a most refractory material which defeated him and his imitators finally and conclusively.

It is perhaps unfair to criticize an author for not having done something which was not his declared purpose to do, but the reviewer regrets that such a mind as Eastman's, instead of engrossing itself upon a task of clearing the Augean stables of Marxian intellectualism and pseudo-intellectualism, has not directed itself to a more concrete and comprehensive examination of the problems of engineering of social institutions. The answer seems to lie in the propensity of the intellectual's mind to embrace a social theology which gave rise to the necessity of concentrating upon this job of demolition.

The two essays in Part V, "What Science Is" and "The Seeds of the Marxian Philosophy," are entirely new, the remainder being adaptations of earlier writings.

SELIG PERLMAN.

*University of Wisconsin.*

*Government in War-time Europe.* EDITED BY HAROLD ZINK AND TAYLOR COLE (New York: Reynal and Hitchcock. 1941. Pp. x, 249. \$1.50.)

The nine separate studies in this volume, each by a distinguished American political scientist, are extended versions of as many papers on the belligerent European scene presented by the authors at one of the round tables of the 1940 meeting of the American Political Science Association. Their subject-matter covers roughly the period from the outbreak of war in the summer of 1939 to the German occupation of the Balkans. The first two of the nine studies, prepared by Professors E. P. Chase and W. H. Wickwar, deal with Great Britain; and the two which immediately follow, from the pens of Professors F. M. Marx and Taylor Cole, are devoted to Nazi Germany. Comprising considerably more than half of the entire volume, these four studies are substantial monographs depicting the impact of the war upon the governmental and administrative establishments of Europe's two principal belligerents and the war's influence upon the evolution of their respective economies and national policies.

The remaining five studies deal with areas of embattled continental Europe outside of Germany proper. In one of these, Professor John N. Hazard places students in his debt for his analysis of the advancing authoritarianism of the Soviet régime and for his description of the assimilation of the territories which the U.S.S.R. annexed during 1939 and 1940. In another, Professor William Ebenstein deals with the growing disesteem into which Fascism has fallen in Italy as a result of the war's privations and defeats, and with the reign of terror to which Fascism is resorting in order to remain in the driver's seat. In still another, Professor J. G. Heineberg treats of the dubious national foundations of the Pétain régime in unoccupied France and of that régime's somewhat nebulous constitutional organization. A brief summary of Axis conquest and power politics in the Balkans, contributed by Professor Joseph S. Roucek, and a chronicle of political and constitutional developments in Sweden and Nazified Norway, by Professor A. G. Ronhovde, complete the volume.

The purpose of editors and authors was undoubtedly to provide a well-rounded and authoritative survey of the political changes which have taken place in Europe during the past two years. Many readers will, notwithstanding, be less interested in this service, however well performed, than in the clues which the volume offers to the institutional and ideological trends that the war is fostering and that are therefore likely to influence post-war reconstruction. As becomes savants, the authors, by and large, eschew the rôle of prophet; nevertheless, the future is often implicit in their observations on present developments. Those fearful of the ultimate demise of democratic institutions will take comfort from the statement of Professor Chase that so characteristic a democratic organ as the British House of Commons has "indubitably gained" from the war.

Those curious about constitutional trends among Europe's autarchies will find enlightenment in Professor Marx's description of the shift in popular support from the party to the army in Germany and of the rapid substitution of administrative experts for erstwhile politicians and rabble-rousers in the party and governmental high commands. Nor can any reader fail to grasp the implications of permanence in the vast recent extension of administrative functions and in the universal emphasis, provided in words if not in deeds, upon the promotion of social services.

One or two of the studies, probably because of the inaccessibility of official information, possess a somewhat flimsy documentary basis, contrasting sharply in this respect with the remainder of the book. The editors have achieved a satisfactory degree of uniformity in the volume's content and organization, a rather remarkable feat in view of the circumstances under which the various studies were first prepared and the perennial difficulties of composite authorship.

ARNOLD J. ZURCHER.

*New York University.*

*Concerning English Administrative Law.* BY SIR CECIL THOMAS CARR.  
(New York: Columbia University Press. 1941. Pp. ix, 189, \$2.00.)

From a wealth of information and experience, Sir Cecil Thomas Carr, who delivered a series of lectures on administrative law at Columbia University, writes of the historical background, the intricate problems involved, and the present status of the development of administrative law in England. A practical and realistic point of view is apparent in the comments and observations regarding the most persistent and controversial phases of administrative justice. It appears to be taken for granted in England that simple questions of fact can be determined swiftly, cheaply, and effectively outside the law courts. And it is also taken for granted in dealing with the consideration of delegations of administrative powers to executive officers that though lawyer-like methods find special favor with lawyers, for a judiciary to presume to impose its own methods on administrative or executive officers is a usurpation of authority. Delegations of power in England are made with little judicial scrutiny and opposition, since there is no need "to rationalize the doctrine of separation of powers or to soften it with a *quasi*." Speaking of the judges' efforts to secure the power to prescribe rules of procedure, it is noted that the judges did not object to the delegation of powers as long as the delegation was in the right hands. In fact, the principle of equality of departments on which the judges frequently insist is, indeed, hard to reconcile with the privileged position conceded to judges and sometimes also to policemen.

About twenty years ago, the author wrote an excellent little book on delegated legislation as it was developing in England. He again considers



the problems involved in the delegation of power to administrative agencies and the requirements and limitations which should surround such delegation. He advises a scrutinizing committee of Parliament to examine delegations of power to the ministers and to exercise a more definite control over ministerial powers than is possible under present conditions.

The crisis powers such as were conferred by Parliament in the Defense of the Realm Act, 1914, the Emergency Powers Act, 1920, and the Emergency (Defense) Act, 1939, which require everyone in Britain to place himself, his services, and his property at the disposal of His Majesty, are analyzed so far as they affect administrative law. A clearly recognized feature of English law that war cannot be carried on according to the principles of Magna Carta has brought marked transformations in administrative practice and procedure.

The preparation of and discussions concerning the Logan-Walter bill, its passage by Congress, and the veto of the bill by President Roosevelt, along with the report on administrative procedure in government agencies by the Attorney-General's Committee, have brought to public attention some of the most important problems concerning administrative legislation and adjudication in the United States. This series of lectures gives little in the way of support to the proposals of the minority of the Attorney-General's Committee favoring the enactment of a code prescribing fair standards of duty and procedure of administrative officers and agencies. The definition of proper and fair standards for administrative action is, indeed, an issue which is as yet too much in the realm of uncertainty and of political controversy to make it likely that a satisfactory code could be drafted and enacted. In fact, Sir Cecil Thomas Carr thinks that it is a mistake to assume that a single formula for all kinds of tribunals offers an easy solution for the problems of administrative legislation and adjudication.

The fundamental issue of administrative as well as judicial justice is conceded to be that it is not enough merely for justice to be done; it must manifestly appear to be done. Due to the great amount of work to be done and the need for expeditious action, it is often difficult to operate in accord with this principle in public administration, and there is much room for improvement to accomplish the above end in administrative justice. In England, as in the United States, it is difficult to counteract the widespread belief that "bureaucrats have too little wisdom and too much power." Laboring under great difficulties to deliver the lectures and issue them in book form, due to war conditions, the author has produced a work which is truly "a monument to the finest English scholarship"; and there is no field in which there is a greater need for the kind of scholarship and practical wisdom that characterizes these lectures.

CHARLES GROVE HAINES.

*University of California at Los Angeles.*

*Modern Democracy.* BY CARL L. BECKER. (New Haven: Yale University Press. 1941. Pp. 100. \$2.00.)

*Democracy in Government.* BY JOHN J. PARKER. (Charlottesville: The Michie Company. 1940. Pp. viii, 116.)

In several respects, these books have much in common: their size, the fact that both were originally prepared to be delivered as lectures at the University of Virginia, and the warmth with which both authors speak of democracy. But beyond these characteristics the differences between the two are more significant than their similarities. Judge Parker's book is a thoroughly conventional exposition and defense of the American system of government. Professor Becker's treatment is perhaps not to be described as original, but it is certainly not, in the usual sense, conventional. Judge Parker cites a great many political philosophers and jurists, but, except when he is considering judicial decisions, his discussions or references give evidence of hasty reading rather than of long reflection. Professor Becker's little book is clearly the highly compressed product of many years devoted to reading and thinking about the development and present condition of democracy. Judge Parker appears to believe that all that is needed today is some further improvement in the "processes" of government. The forces which have made that change necessary are not even referred to. Professor Becker is concerned, not so much with processes, as with more fundamental problems. The book of Judge Parker has little of value for most political scientists; that of Professor Becker has a great deal.

*Modern Democracy* was evidently chosen as a title because Professor Becker believes that democracy, as we know it, is a comparatively new set of institutions. Incidentally, it is a set that has flourished only in prosperous communities. The traditional idea of liberty which it embodies is still sound and essential in the political and intellectual realm, but it is no longer applicable to that of economics. The technological revolution has greatly intensified those disparities and uncertainties which have been present in democracies since the revolutions were over and the new orders were established. Many changes in the social and economic systems must be made if democracy is to endure. Technological progress has made starvation or subsistence existence unnecessary. The issue is not whether we shall have governmental regulation—that we have long had—but what sort and how much. Freedom to be unemployed, or freedom to be employed at a level upon which life is barely possible, will not survive just because of the old war cries. And, for that matter, the freedom of economic enterprise was, in the Revolutionary era, the idea least stressed and of least importance for purposes of propaganda. Few persons, furthermore, have ever known economic freedom. What we need, and what we must

have, is time for experimentation with methods for solving some of the economic and social problems of democracy, while retaining the political and intellectual liberties. The present war situation will postpone, but it will not aid in the solution of, this problem. Yet that situation is inescapable if the states in which democracy exists are to have an opportunity to carry on their experiments.

So brief a summary cannot do justice to a book which is itself a summary. It may serve to indicate the book's surprising scope, although it will not reflect the cogency and the penetration of the discussion. The book presents a clearer and more impressive statement of the problem which inevitably confronts the democracies of the near future than any with which I am familiar. It is the only one on its much discussed subject I have read in years that I wished were longer. Because it is so compressed, and because it is consistently underwritten—there are no stylistic tricks, no rhetorical devices which give the impression of greater erudition and more intensive thought than are actually reflected—it is unlikely to have the audience that it deserves.

BENJAMIN F. WRIGHT.

*Harvard University.*

*John D. Rockefeller; The Heroic Age of American Enterprise.* BY ALLEN NEVINS. (New York: Charles Scribner's Sons. 1940. Vol. I, pp. xiii, 683; Vol. II, pp. x, 747.)

All the primary qualities which distinguish Mr. Nevins' work—pains-taking research, careful organization of materials, and solidity of style—appear in the volumes before us. Of them nothing need be said here. For the serious student of history already familiar with the development of American economy after the Civil War and with the documentation of the period, two questions will doubtless seem fundamental: What materials hitherto unknown or unused has the author unearthed and commanded? Under what overarching conception of Mr. Rockefeller in relation to the circumstances of his times has the author selected, arranged, and presented his findings?

The question bearing on new materials is the more easily answered. Mr. Nevins says in his preface that he has enjoyed "the benefit of the Rockefeller family papers, generously placed at his disposal by Mr. John D. Rockefeller, Jr.," that he has used the papers of some of Mr. Rockefeller's chief opponents, and that he has interviewed many men who took part in the struggles of the time. This statement is amplified by various references in footnotes. A note on page 182 of Volume II reads: "Most business correspondence of the Standard Oil has long since been destroyed." Another note on page 725 of that volume explains that Mr. Rockefeller's

"business correspondence was never extensive, and has largely been destroyed."

Respecting papers of Mr. Rockefeller's leading associates, Mr. Nevins adds: "I have been unable to obtain any exact information from the Harkness family or the Flagler estate" (Volume I, p. 251); "An effort by the author in 1936-37, several times renewed, to gain access to Rogers' papers, was met by information from an attorney connected with the estate that the business papers were being destroyed" (Volume I, p. 343). Nor does it appear (Volume II, pp. 500-515) that Mr. Nevins has had the advantage of consulting all the unpublished papers of John D. Archbold or Senator Foraker in connection with the relations of these two gentlemen and Standard Oil interests.

A careful check of the footnotes of the two volumes shows that the part of the text relative to Mr. Rockefeller's business activities is based mainly on well-known types of materials—legislative investigations, legal records, newspaper files, memoirs, and secondary works—supplemented, principally in matters of detail, by references to new sources, such as letters, memoranda, and interviews. Apart from accounts of Mr. Rockefeller's family life and his philanthropies, that is, in respect of his business activities, the new materials, whatever their nature, are not likely to alter in any fundamental way the conclusions on the outstanding controversies associated with Standard Oil interests which competent students have already drawn from sources long available to them.

And what is Mr. Nevins' overarching conception of Mr. Rockefeller in relation to the circumstances of his times? A clue is given by the title page, which reads: "John D. Rockefeller; The Heroic Age of American Enterprise." On the first page of his preface, Mr. Nevins indicates that he has attempted to meet the need for "an objective and impartial account of Mr. Rockefeller's life." On the second page, he adds: "If the author has brought any bias to his work, it was that of a convinced believer in a free competitive economy." Under Mr. Nevins' scheme of thought there was apparently no contradiction between his belief in a free competitive economy and categorical statements which he makes in the text; for example, the contest between the South Improvement Company and the oil regions was in essentials a "contest between heavily capitalized industry, seeking concentration and organization, and the individualistic, small business man; between a new economic order and the old" (Volume I, p. 338); "combination was an irresistible tendency of the age" (Volume II, p. 708); "the struggle against Rockefeller's movement for industrial consolidation was . . . largely a struggle against destiny" (Volume II, p. 709); Mr. Rockefeller "divined the real nature of economic forces," and "Rockefeller's economic vision, and the courage shown in his fidelity to it, deserve commendation" (Volume II, p. 710). Or perhaps Mr. Nevins'

study of Mr. Rockefeller changed his original bias in favor of free competitive enterprise.

In dealing with highly controversial matters, Mr. Nevins occasionally seems more than duly eager to give Mr. Rockefeller the benefit of the doubt, and makes categorical statements that are not in the nature of proof or are not supported by evidence. For example, "No evidence exists that Rockefeller knew anything about Archbold's political activities. . . . The sensational press was filled with highly colored tales of the Standard's political machinations, and everybody knew that they possessed some truth. Rockefeller was not informed of these activities" (Volume II, pp. 505-515; see also Volume I, pp. 401 ff.). How does Mr. Nevins *know* that no evidence *exists* in the papers he has not been able to consult or has not consulted? How does he *know* that Mr. Rockefeller was not informed of the machinations carried on by the Company? Does he *know* that Mr. Rockefeller never read any of the newspapers which contained stories possessing "some truth"? If "everybody" knew that they possessed some truth, how did Mr. Rockefeller escape hearing about them? At all events, it may be suggested in the interest of precision that the sentence be modified to read: "Everybody, except Mr. Rockefeller, knew that these newspaper tales possessed some truth."

While Mr. Nevins scrupulously and correctly refrains from using any derogatory or belittling adjectives in dealing with Mr. Rockefeller in controversial cases, he is not always so careful in referring to parties on the other side. For instance, Mr. Nevins says that one of H. D. Lloyd's chapters seems to him "one of the most dishonest pieces of so-called history he has ever read," and that "honest study of the Regions newspapers would have shown Lloyd that . . . they were imploring the Regions men to stop disgracing themselves by acts of lawlessness" (Volume II, pp. 336-337). In speaking of the Industrial Commission which investigated the Standard Oil, among other interests, Mr. Nevins deems it fitting to characterize Senator Kyle as a "one-time preacher, and a former free-silverite and Populist," but does not, as he might, characterize in depreciatory terms, Senator Penrose, who was on the Standard's side (Volume II, p. 499). Referring to the controversy over Professor Bemis at the University of Chicago, Mr. Nevins says categorically that Mr. Rockefeller "certainly never knew or cared anything" about Bemis' teaching, and that Bemis was "bumptious, tactless, and offensive" and was besides "a trouble maker" (Volume II, pp. 263-264).

In the opinion of the present reviewer, Mr. Nevins has, by the frequent use of imprecise language and by derogatory characterizations of critics, done Mr. Rockefeller a disservice, unintentionally of course, and there is still room for an "objective and impartial" biography of that great industrial leader. This suggestion, however, is in no way designed to depreciate

the value of the many correct, precise, and indubitable statements of fact which Mr. Nevins has made in his voluminous pages. There is a good index.

CHARLES A. BEARD.

*New Milford, Conn.*

*The Pardoning Power of the President.* By W. H. HUMBERT. (Washington, D. C.: American Council on Public Affairs. 1941. Pp. 142. \$2.50.)

There have appeared, in the years since the adoption of our constitution, several outstanding commentaries on that document. Writers have turned their attention to phrases or words in the "supreme law of the land" for the purpose of clarification, only to emerge from their labors burdened with great masses of minutiae. Mr. Humbert has avoided the pitfalls of "aimless erudition" and "popular generalization." He has struck the happy medium of presenting his material in straightforward fashion, yet in language factually meaningful to both layman and legalist. Such an accomplishment deserves recognition.

The present volume is not one which will reach a large audience, for it is a study of a single aspect of the vast domain of executive authority. But the teacher of American constitutional law will do well to read the work because of the precision, care, and historical perspective found throughout it. The opening chapter presents, in adequate fashion, an historical approach to the pardoning power of the president, leaving a world of suggestions for further study by the curious reader, yet providing a solid "frame of reference" for the ensuing pages. Chapter II completes the "frame of reference" by a meticulous definition of terms—a process too often neglected by political scientists. Then follow two chapters devoted to the constitutional and legal aspects of the pardoning power. The "case sources" are admirably supplemented by material of a biographical and secondary nature. To the present reviewer, Chapters V and VI were of the greatest interest. Here the author takes us behind the bulwarks of legalism and gives us a glimpse of the administration of the pardoning process. In these pages the president's pardoning power is seen to be a functioning, vital activity rather than a cold and impersonal grant of authority.

Mr. Humbert's conclusions, while not startling, are worth emphasis. He believes, and with sound evidence, that "better use of the pardoning power, not abandonment of it, should be sought." More positive and corrective use of this executive authority would work to the advantage of the administration of justice. Mr. Humbert's position in the closing pages of the monograph will give added hope to those who have been urging that we should deal with the criminal rather than with the crime, particularly in connection with the pardoning process.

It is to be hoped that the American Council on Public Affairs will see fit to publish more volumes of this nature. Certainly not all of the American constitution can be treated by this monographical method. But significant areas remain unexplored and should be susceptible to such treatment. By the gradual accumulation of detailed factual studies, the American constitution may be more clearly understood.

ETHAN P. ALLEN.

*State University of Iowa.*

*The New Centralization.* BY GEORGE C. S. BENSON. (New York: Farrar and Rinehart. 1941. Pp. xii, 181. \$1.00.)

In twelve short chapters and a shorter epilogue, Professor Benson presents and analyzes the major problems created by the existence of several levels of government in the United States. The standard arguments for and against centralization are listed and considered, and the more common proposals for reform are made the subject of brief comment. The author scarcely succeeds in his avowed purpose, i.e., to "present new points of view to others"; but at least he discusses the old points of view in an ingratiating manner.

If the editors of *Reader's Digest* were asked to cut down this volume to the size of one of their articles, they might perhaps do so in the following manner:

The American system of political decentralization has important values—values fundamental to the political, social, and economic life of America as we have known and now know it. On the other hand, this same system has failed and frustrated us at many points. In an attempt to meet new situations and new dangers, a shift in the old governmental pattern has been taking place. Some of the changes may be deemed good, others bad. One of the most serious charges which can be leveled at the process is its over-all lack of destination. But students of government have been attempting to formulate various remedial plans for a permanent readjustment.

Areas of local units should be increased to sizes more consistent with the administration of contemporary governmental functions. At the same time, state governments should improve the quality of supervision of localities. Local fiscal differences should be equalized, and this result should be achieved, at least in part, by a system of block grants based on objective criteria and conditioned on certain standards of administrative efficiency. State governments should coöperate to eliminate interstate evasion and competition, and state standards of legislation and administration should be improved. Direct federal-local relations, though not intrinsically desirable, should not be discouraged at present. Increased federal activity in certain fields is necessary, and should not be considered

a threat to our decentralized system. There are, however, some functions—police protection and education, for example—that should be kept in state and local hands, though unconditional grants from the federal treasury in support of these services would be acceptable. Some form of federal administrative regionalism should be encouraged. The administrative procedures of many federal agencies should be regularized.

Block grants from the federal treasury to the states, distributed on objectively determined criteria of need and conditioned on standards of general administrative efficiency, would probably be desirable. Performance of certain basic services might also be required. Each extension of the present functional grant system should be critically appraised to determine its effect on the federal system. The administration of grants-in-aid should permit genuine experimentation and adaptation on state and local levels, but should also be designed to secure administrative efficiency and rapid exchange of ideas.

AUSTIN F. MACDONALD.

*University of California.*

*Federal Departmentalization.* BY SCHUYLER C. WALLACE. (New York: Columbia University Press. 1941. Pp. ix, 251. \$2.75.)

In a well written and scholarly monograph, Professor Wallace has presented a rather pessimistic picture of the scientific future of public administration. As he puts it, "It is problematical at least whether administration will ever attain the status of a true science" (p. 237). To make his point, he examines the various alternatives advanced in recent years by various so-called experts in the field of public administration with reference to the organization of the administrative branch of the federal government. His analysis of the divergent proposals demonstrates that each has its good points and weaknesses. Which one will be chosen in a given case depends, he believes, upon the education, experience, and predilections of those who have power to make the choice. The result is not based upon scientific principles, but upon inarticulate major premises—assumptions—hypotheses—few of which have been verified or are capable of verification.

If one accepts Professor Wallace's definition of a science, he is well nigh compelled to arrive at the same conclusion. It would seem, however, that he is attempting to apply to a social science the yardstick appropriate to astronomy, mathematics, or physics. The practitioners of these sciences would be the first to deny the immutability of the so-called scientific laws which circumscribe their activities. But it must be admitted that they have travelled farther along the road of verification of their basic assumptions and hypotheses than have the social scientists. It is difficult for the writer to share Professor Wallace's pessimism. Probably the social sciences



must borrow generously from the assumptions and verified hypotheses of psychology, genetics, and human biology. Perhaps it must even share in the work of formulating and verifying such assumptions. But the future looks bright and challenging.

Could it be that Professor Wallace is deliberately aiming his barbs at administration, but not at the other areas of political science? It would seem to the writer that politics, theory, public law, comparative government, and the other areas which constitute the recognized field of political science would have at least as much difficulty as administration in establishing their claim to recognition as exact sciences.

But Professor Wallace has performed a useful service in challenging the dogmatism and *ex cathedra* attitude of many writers. Value judgments are common in most political science texts. Even where they are not found in the text, they are supplied by the teacher. A modicum of humility in presenting personal conclusions seems required by good taste. But to deny to students the benefit of personal views on public questions—and the assumptions on which they are based—would deny a basic obligation of the teacher. Absolute objectivity and impartiality in dealing with such subjects as democracy and autocracy is hardly to be expected in a nation engaged in quasi-war.

All teachers and students of public administration should read this book. It will make them angry. It will make them think. It may make them more careful. It should make them better political scientists—and should result in an ultimate advance in the scientific status of our professional field.

HARVEY WALKER.

*Ohio State University.*

*Congressional Procedure.* BY FLOYD M. RIDDICK. (Boston: Chapman and Grimes, Inc. 1941. Pp. xix, 387. \$4.00.)

Just as wisely as the fathers defined and lodged powers under the Constitution, they left procedural responsibility of the national legislative body to each house, or, in part, through joint action, to both of them. Merely to say that the average Congress within a period of two years is called upon to consider between twenty and thirty thousand legislative proposals fails to tell the story. Of these proposals, some reach to the very life or death of the republic, others only to a private claim of "Mr. Jones," and others fall in between. Obviously some means must be devised for sorting out as impersonally as possible the important from the trivial, and that will give the former priority of consideration. Regard for the former spells statesmanship; attention to the latter may be essential to individual or party success.

The story of how Congress does this is Mr. Riddick's task. In a legisla-

tive body there must be debate, yet there must be action: the minority must be heard, yet the majority must assume responsibility. The individual members of majority and minority must feel that on the whole they have been fairly dealt with, both individually and as groups. The means by which all this is done is called "congressional procedure." Mr. Riddick points out that because of its great size the House must have rules that are more definite than the rules of the Senate.

The author traces step by step the technique of House practice; party responsibility and its exercise through caucus and conference; the power of the speaker, floor leaders, steering committees, and whips. He considers the committees of the House, their appointment and their significance. Following this he analyzes the House calendars, which, with the stripping of power from the speaker in 1909, have become the great agencies in the winnowing-out process. The reader will observe that the private and unanimous consent calendars, together with Calendar Wednesday, take over quantitatively the bulk of the business of the House, yet only a small part of the business when measured by importance. For these calendars, the time consumed is about ten days out of every month, and often less. This leaves most of the time for major legislation.

The author discusses the Rules Committee and its peculiar power. This committee could better be described as a "Rules Calendar," for its essential responsibility lies in presenting special rules from time to time which make possible the consideration of highly important matters that otherwise would be blocked for indefinite periods.

Having developed the mechanics of House procedure, the author uses his study as a background for the simpler and less formal practice of the Senate. He does not fail to discuss the conference committees, with their definite responsibility, and their exercise at times of highly arbitrary power.

Mr. Riddick has done a scholarly piece of work. The volume should be on the reference shelf of every teacher of government and student of the legislative process.

BURTON L. FRENCH.

*Miami University.*

*Government and the American Economy.* BY MERLE FAINSOD AND LINCOLN GORDON. (New York: W. W. Norton and Company. 1941. Pp. 863. \$3.90.)

Part I of this volume presents the economic, organizational, legal, and constitutional setting in which American enterprise has developed. The three succeeding parts deal with the relation between government and economic life during the last half-century. Consideration is given the impact of World War II on our economy.

Discrimination characterizes the selection of illustrative material, and the authors have organized compactly the material selected. A critical sense of proportion and balance is maintained throughout the book. The method is revealed in the analytical approach to the relation and inter-relation of the primary economic fields (agriculture, business, and labor) and to the trends and developments in private practices and public policy designed to cope with those trends and practices. The shifting policy from aid to economic enterprise to regulation to participation in economic enterprise bespeaks Darwin rather than Newton. Philosophical aspects of motivation are intelligently recognized, despite the minor consideration that can be accorded them, whether discovered in private practices or in public policy.

In stressing the significant change in government attitude from negative to positive, be it in the field of business, agriculture, labor, or consumers, the authors not only depict the dynamic character of motivation, but also intellectually condition the reader to the implications of inevitably increasing incidence of government upon economic processes in the future. While their attitude is pragmatic, they neither decry nor adulate.

Because of its positive qualities, this book easily places first in its field. It should make a wide appeal to all students of current federal politics.

JOHN J. GEORGE.

*Rutgers University.*

*Administration and the Rule of Law.* BY J. ROLAND PENNOCK. (New York: Farrar and Rinehart, Inc. 1941. Pp. xii, 260. \$1.00 college edition, \$1.50 trade edition.)

Professor Pennock's account of the evolving relation between administration and the courts is judicious and readable. Salvation, as he sees it, lies within the existing scheme of regulatory tribunals, rather than in resort to any novel prescriptions. Thus on the mooted question whether rule-making and adjudicatory functions should be lodged in different sections, he concludes that "the decisions, and the gradually developing rules which grow out of them, are likely to be much sounder if they are made by men thoroughly familiar with the particular subject-matter concerned, and if they are made by the same men who, through the rule-making power, have formulated the standards to be applied" (p. 112). He recognizes the possibility of trial examiners being fired with a zeal to pervert, but recommends only such safeguards as "proper attention to the separation of functions within the commission" and greater independence of tenure (p. 113)—with which the majority of the Attorney-General's Committee on Administrative Procedure are in accord.

As to administrative finality, the author insists upon no simple formula, stressing rather the diversity of matters subject to official con-

trol. There are situations, as when administration impinges upon the liberty of person, where independent judicial scrutiny is, on balance, productive of good. There are others, such as rate regulation and workmen's compensation, where a specialized administrative agency is more apt to make an intelligent adjustment of interests. As a regulatory tribunal perfects its processes—as to which Dr. Pennock makes understanding suggestions—the courts concede it a larger portion of the field. The Supreme Court as now constituted views the administrative process with no jaundiced eye as in the days of *Ben Avon Borough*, *Crowell v. Benson*, and the *St. Joseph Stockyards Case*—a development which the author approves.

The book is evidently directed primarily at that portion of the public whose reading is selected for it by college professors. Accordingly it steers a happy course between abstruse refinements and loose simplification. The argument is reflective without being obscure, and the style is facile. Judicial formulations such as the category of "constitutional questions" are presented as the rationalizations which they are, but without resort to patronizing smartness. Perhaps the student would profit by knowing with some particularity how a few typical administrative tribunals operate, but this is the sort of illustrative material which each instructor may present in his own way. The book will be understandable to beginners for whom John Dickinson's monograph, *Administrative Justice and the Supremacy of Law*, would be too difficult and the *Final Report* of the Attorney-General's Committee too technical. It sets a high standard for Professor Bradley's series on "American Government in Action."

CHARLES FAIRMAN.

*Stanford University.*

*Democracy or Anarchy? A Study of Proportional Representation.* BY F. A. HERMENS. (Notre Dame, Indiana: The Review of Politics: 1941. Pp. xxx, 447. \$4.00.)

To explain the collapse of democratic institutions in Europe, political scientists have taken to economics, psychoanalysis, ethnology, and mysticism, and have generally avoided political science. Mr. Hermens, however, challenges the contemporary prejudice against attributing importance to political institutions, and argues that representative government broke down only where there was a fault in the fundamental political institution—the electoral system. That fault, he says, was proportional representation.

*Democracy or Anarchy?* first discusses the theory of electoral systems and then describes the historical results of the majority system in Great Britain and France, the effect of P.R. on various nations, and the experience of American city governments with P.R.

The section on the United States is the least satisfactory in the book,

not because Mr. Hermens' arguments about P.R. in American cities are less cogent than those of his opponents, but because, as he admits, the effects of P.R. in a city are necessarily limited. And when he undertakes to discuss the respective merits of the various forms of P.R., Mr. Hermens' arguments seem nearly as involved as his subject-matter.

On the general theory and on the experience of European nations, however, Mr. Hermens' study is impressive. He begins with the argument that the function of legislators is not to "represent" the particular voters who chose them, but to participate in a government responsible to the entire electorate, and that the groups to which P.R. would give representation are not entities with a right to independent political existence. Under the majority system, minorities are represented, but only after they have signified their willingness to coöperate and compromise by joining one of the two sides in an electoral campaign; under P.R., they are assured of a foothold within the legislature from which to sabotage administration if they prefer not to compromise.

Mr. Hermens agrees with the advocates of P.R. that P.R. permits legislators to win and hold their seats by standing on definite political principles because the voters are not required, as they are by the majority system, to choose the "lesser evil" between two parties. But Mr. Hermens insists that compromises are essential to the democratic process of bringing together a responsible majority and that such compromises will be made only during a campaign if the political leader has to appeal to the marginal moderate voter to get a majority, never under P.R. after a campaign, when entrenched fractional leaders will hold to their divergent principles in order to justify their existence. The electoral system, he argues, has a dynamic and sometimes decisive effect on the nature of politics, and while the effect of the majority system has always been centripetal, P.R. is a strong centrifugal force.

The illustrations of this argument from Italian and German experiences are the heart of the book. By comparing the results of P.R. with those of a hypothetical majority system on the basis of the votes actually cast, Mr. Hermens shows that P.R. gave the Fascists and Nazis seats that they could not have won in single-member districts, enabled them to prevent the formation of responsible ministries and thus to discredit the efficiency of democracy, and provided them with Communist legislative blocs by which to frighten the moderates into extremism.

For example, in the 1930 Reichstag election, the last in which Nazis and Communists together won less than the majority that later enabled them to make government impossible, the Nazis won nearly one-fifth of the seats through P.R., when they did not poll a majority in a single one of the 400 individual constituencies into which Mr. Hermens hypothetically divides Germany.

The German experience brings us to the heart of the difference between the views of Mr. Hermens and those of the P.R. advocates with whom he has been debating. Mr. Hallett, of the National Municipal League, believes that Hitler came to power through a defect in the proportionality of representation in the Reichstag: if the Communists had not been expelled in 1933, he argues, the Nazis would not have come to power. Similarly, Mr. Humphreys, of the Proportional Representation Society of Great Britain, says that the Franco forces revolted in Spain because the majority system gave the moderate Republican administration more than the proportionate majority to which mathematical justice entitled it.

Mr. Hallett and Mr. Humphreys want all political leaders to reconcile their peculiarities by legislative deliberation; Mr. Hermens says deliberation is impossible among men whose aims are irreconcilable and who are not individually responsible to electoral districts which tend to be cross sections of the nation as a whole.

Mr. Hermens concentrates his attention so greatly on one aspect of the relation between electorate and legislature that he only occasionally buttresses his position by showing its connection with related problems. He might well have emphasized more strongly that the electorate should not only choose a legislature by majority vote, but demand that it accept responsibility for its decisions; that the legislature not only should be chosen by a system involving responsibility to the whole nation, but ought to adopt procedures enabling it to act as a whole rather than through blocs or combinations of blocs.

But his particular subject is broad enough for a single book. On it, Mr. Hermens' research is thorough, his historical interpretation realistic, and his general argument philosophically sound. His study leaves the burden of proof distinctly on those who propose to set up an electoral system by which the voters will be impelled to affirm their conflicting philosophies at the cost of their fundamental purpose—the maintenance of responsible government.

DON K. PRICE.

*Public Administration Clearing House.*

*Public Utilities and the National Power Policies.* BY JAMES C. BONBRIGHT.  
(New York: Columbia University Press. 1940. Pp. 82. \$1.25.)

The author and Columbia University have performed a distinct service in providing a "convenient synthesis" of the national policies (Roosevelt administration policies) relative to electric public utilities. The monograph consists of the lectures delivered by the author at the 1940 summer session of Columbia University.

That the monograph was published early in the 1940 presidential campaign, in which it was predicted that the national power policy would be

a major campaign issue between the Democratic and Republican candidates, fortunately did not detract from the author's traditional fair, clear, and scholarly approach to the governmental aspects of the electric power question. The growing prominence of the foreign policy of the Administration, which dominated the closing period of the campaign, in no way invalidated the author's thesis that the "set of problems raised by the conflict between private profits and social control in regulated industry is one of the major political issues of the day." The author gives President Roosevelt credit for clarifying the issue relative to electric power and raising it to the "rank of a major political issue."

After stating the several historical reasons for governmental regulation of electric power, the author emphasizes the "natural monopoly" characteristic of the electric power industry. In the absence of adequate competition, "which was proved hopeless by sad experience," and in the presence of the natural-monopoly feature of public utilities, "public opinion . . . demanded either regulation or else outright public ownership as a protection against the abuses of a private monopoly" (p. 7).

Under title of "fair value doctrine" of rate regulation, the author points out the conflict between "two different standards of reasonableness": the "cost plus" standard and the "competitive" standard. A qualified version of the "cost plus" standard has been the one most usually adopted by commissions, while the present Roosevelt or national power policy favors the "competitive," or "public yardstick," standard.

The failure of the "cost plus" standard has grown out of the "court-made 'law of the land,'" which has led commissions, often after long litigation, "to decide rate cases by reference to an almost meaningless engineering appraisal of the physical properties." This attitude of the courts, according to the author, "has gone a long way toward bringing regulated private ownership into disrepute" (p. 20).

The author weighs the strength and weakness of holding companies, with their tremendous size, exorbitant prices paid for properties, pyramided holding-company debt, and unwarranted profits to their service companies. He points out that "the investors have been the most immediate victims" of holding company activities.

Under the chapter on "Power Policies of the Roosevelt Administration," the author traces the power policies of Roosevelt as governor of New York, where "he had met the utility problem head-on," and as candidate for president in 1932, when he announced "a new 'national power policy' as a part of his political platform"—which policy to this day has "taken the form of a consistent and coherent program." The program includes the attempt to fortify and make more efficient rate regulation of private utilities and to combine such regulation with some form of public ownership, on the assumption that "under proper conditions private and

public plants can co-exist in tolerable harmony and in wholesome rivalry" (p. 30). The author concisely presents the essentials of the program under the headings: (1) measures designed to make regulation more effective; (2) the public power program; and (3) rural electrification.

Under the above, the effect of the Federal Power Act of 1935, giving partial control over interstate business of electric utilities, is explained. With regard to the court-made "fair value rule," the author ventures to predict that the Court in the future will take a "flexible position," leaving freedom for experiments with different types of rate control (p. 34).

The public power program intended to create a "public yardstick" system has recently been influenced by the apparent necessity "to plan public works for relief of unemployment." The Administration's program presents two aspects: (1) the public water-power projects and (2) federal support of publicly owned, local distribution systems.

After pointing out the reasons for the action of the government in the field of rural electrification, with emphasis upon the social gains and the probability of "resort to outright subsidies of formidable size," the author leaves the question open with the statement that "few problems of democracy call for a rarer combination of social vision and hardheadedness than does the problem of subsidized services" (p. 55).

In conclusion, the author points out that he limited himself to two things: "first, to indicate why private ownership under state regulation came into such disrepute . . . and secondly, to review the efforts of the present Federal Administration to meet the situation, partly by fortifying regulation and partly by encouraging experiments in public ownership." He warns his readers that his treatment of the subject should not be taken as an appraisal, favorable or unfavorable, of the Roosevelt power program in its many details and in its methods of execution. Such an appraisal, which no one man would be competent to make, must await the test of riper experience" (p. 56).

The author has no fear that public ownership in the utility field will become "an entering wedge for socialism." "The history of public ownership, not only in this country but abroad, shows no marked tendency on its part to spread, like an infection, into the non-utility field" (p. 58).

An appendix of twelve pages presents a reprint of an article by Dr. Bonbright, published in the *Yale Review* in 1938, in which he favors continuation of the trend toward public ownership, "while giving adequate assurance that legitimate investments in private power enterprises will be safeguarded against destructive public competition."

This study should encourage other social scientists to meet current social problems "head-on."

ORREN C. HORMELL.

*Bowdoin College.*



*Employee Training in the Public Service; A Report Submitted to the Civil Service Assembly of the United States and Canada by the Committee on Employee Training in the Public Service, MILTON HALL, CHAIRMAN.* (Chicago: Civil Service Assembly of the United States and Canada. 1941. Pp. xvi, 172.)

Management of personnel has taken an added significance as the affairs of government have increased in magnitude and importance. The Civil Service Assembly has always taken cognizance of, and aided in, the rapid extension and improvement of merit systems in all levels of government. Our extensive defense preparations, with their impact upon all governments, draw added attention and renewed interest to the problems of recruitment, training, salary standards, and general management of public service personnel everywhere.

This volume is one of a series of about ten reports of studies being undertaken by the executive council of the Assembly. The plan is to bring together for the first time a set of authoritative and forward-looking volumes dealing with the major phases of public personnel administration. An ambitious group research enterprise has been set on foot consisting of hundreds of outstanding personnel officials, general administrators, technical and research workers, educators, and representatives of civic, professional, and employee groups. Other volumes to appear are on positive recruitment, the probationary period, classified pay plans, service rating plans, placement, public relations, and several other topics.

Employee training as defined by the study committee is "the process of aiding employees to gain effectiveness in their present or future work through the development of appropriate habits of thought and action, skills, knowledge, and attitudes." To the educator, much of this volume is merely compilation and restatement. However, this is not to say that for those interested in public employee training the evaluation does not present a large amount of sound advice to stimulate and assist in the training process. Emphasis is placed correctly on the part management has to plan and play in aiding employees to gain effectiveness. The committee recognizes correctly that every person in charge of the work of others, from the chief executive to the first-line supervisor, has responsibilities for training those under him. The need for continuous training is all too apparent in every government.

The immediate objectives of any training program, either within or without the government, must be the same, wherever pursued. Employees must maintain or increase their effectiveness in their present positions, must prepare themselves for promotion, must prepare for positions which are more secure than those which they hold, and must develop coördination, morale, and other elements of organization fitness. Naturally, the

only justification for the expenditure of time and money of either the government or the employee is a return to the government service of either a financial saving or an improved service to the public or both. Group and individual forms of instruction and devices for self-instruction are examined and explained. The report does not emphasize or recommend any particular form of instruction, but rather leans to the in-service system of training as presenting a knowledge of the techniques of departmental problems superior to that which could be obtained at formalized educational institutions or through tutoring, short courses, or conferences. The use of a form of sabbatical leave to take advantage of the opportunities of university specialization has much in its favor, has proved extremely successful, and has only one serious drawback—not enough governmental personnel can be taken care of at any one time.

Personnel managers, executives, supervisors, and employees—public and private—should welcome this volume and the others to come as valuable additions to the too scanty literature on specific phases of personnel management, and the Civil Service Assembly is to be congratulated on the launching and early completion of so valuable an enterprise.

EDWIN A. COTTRELL.

*Stanford University.*

*International Executive Agreements.* BY WALLACE McCLURE. (New York: Columbia University Press. 1941. Pp. 449. \$4.75.)

America is aware of the fact that the President has the power to conclude executive agreements, but most readers will doubtless be surprised by the statement that by the time this country was 150 years old more than 1,200 such pacts had been concluded with other countries. Dr. McClure points out that during the same period only 800 treaties were put into force, and that during the last fifty years 524 treaties were made effective as compared with 917 executive agreements. This suggests that a more extensive use may be made of executive agreements in the future.

Dr. McClure's very able work is divided into three parts and contains an introduction and conclusion. In the introduction, the author contends, first, that the two-thirds rule governing the Senate's approval of treaties is undemocratic and that during a critical period it may be injurious to the welfare of the country; and, second, that executive agreements may relate to any subject that may be dealt with by treaty.

Part I is devoted to a description of executive agreements consummated from 1776 to the present. The agreements thus presented are as varied in type and as numerous as space allowed. Part II reveals that the power to make executive agreements is based on constitutional usage; while Part III deals with the constitutional powers of the President and Congress.

Dr. McClure maintains that (1) "in correct theory and on the face of the Constitution as reasonably interpreted, the President has unlimited authority, regardless of subject-matter, to enter into executive agreements"; (2) with respect to executive agreements, as in the case of treaties, the President may execute commitments which deal only with international relations and he may not violate the substantive provisions of the Constitution; (3) certain executive agreements, like various treaties, cannot be carried out except with congressional action; (4) as an element of a democracy, Congress has the final power in case of conflict between a legislative and an executive act; and (5) with the support of Congress, the President can accomplish through executive agreement anything that he can accomplish by treaty.

In the final chapter the author concludes, among other things, that it is necessary to keep the conduct of international relations flexible and legally concentrated. The President, he contends, as a representative of all the people, is a logical organ for that concentration; and while congressional participation in the making of executive agreements during normal times should be insisted upon, during a critical period a curtailed power of the President is not desirable.

The book is timely and well written: and the footnotes reveal extensive research.

WILLIAM HAYS SIMPSON.

*Duke University.*

*Versailles Twenty Years After.* BY PAUL BIRDSALL. (New York: Reynal and Hitchcock. 1941. Pp. xiii, 350. \$3.00.)

In spite of its title, this volume is not primarily a study of the fortunes of the Versailles Treaty in the last twenty years. It is rather an analysis of its making, based on recently published materials and unpublished sources. Appraisals of the effect of certain provisions of the treaty on later developments in Europe are incidental to narratives of the controversies at the Peace Conference on crucial points of the peace settlement: colonies, Japanese claims, League sanctions, disarmament, German borders in the East and in the West, reparations, and Italian claims. The book is an important contribution to the history of the Peace Conference.

Attention is focussed on the fundamental clash between the disinterested idealism of Wilson and the frankly selfish claims of the non-American powers—British dominions no less than Japan or Italy—and on the rôle played by Colonel House. The causes of misunderstandings and disagreements are in part traced to the traditional divergence between the Anglo-American and the Continental attitudes toward the problem of national security. France, outnumbered and ever threatened on the East, found little assurance of security in the program of voluntary international co-

operation sponsored by the insular powers. Universal military service, favored by France and long accepted throughout the Continent as the most democratic as well as the most effective form of recruitment, was regarded with abhorrence by the Anglo-Saxons, who believed themselves secure behind their water barriers. The American nation, led by its lofty-minded President, overlooked the probability of the war having been just another round in an ineluctable and age-old struggle for survival and power. With the inexperience and impatience of youth, it clamored for a millennium of peace, yet in the end refused to bear its share of the burden of maintaining that millennium. The failure of the Anglo-American philosophy to stand the test of reality is now evident. Like France of a generation ago, America today puts her trust in pushing forward her military frontiers and in conscripting her man-power. The futility of covenants not backed by real and unified power must be clear to all.

Yet it was not a bad peace. Probably not since the Congress of Vienna had so much effort been made to work out a just European settlement. Apart from the absurd reparations provisions, which were hardly taken seriously even by those who drafted them, and which were never executed, very little in the peace imposed on Germany was iniquitous or contrary to the pre-Armistice understanding. The author shows how time and again Wilson leaned backward to be fair to Germany, even in the face of advices of his own experts, as on the questions of the Polish boundaries and the Saar. The much-maligned Polish "corridor," for instance, was justified not only as a Polish exit to the sea, but also on indisputable ethnographical grounds.

The interpretation of the conflicts of claims and attitudes at Versailles which forms the kernel of the book is masterly. It is regrettable that the title of the volume seems to stress the somewhat less impressive reflections of the author on the later fortunes of the peace treaty. These reflections are not supported by any concrete examination of European history since 1920, and do not always rise above the commonplace. For instance, the contention that Germany could have been really appeased by timely economic concessions before Hitler took power is merely a repetition of a widespread but unsubstantiated notion. Some confusion between paper guarantees and real guarantees seems to be responsible for the author's insistence that the objective of French security was achieved at Versailles through provisions for German disarmament and the demilitarization of the Rhineland coupled with the promise of an Anglo-American military guarantee, and that only the failure of France and Britain to oppose by force the remilitarization of the Rhineland in 1936 impaired this security.

The author seems to subscribe to the theory that American "defection" from the system of collective "security," which he largely identifies with the refusal of the United States to ratify the peace treaty, was in part

responsible for the failure of that system. But would the mere adherence of the United States to the Covenant have guaranteed continuous readiness to implement its safeguards? In the true spirit of the Versailles era, the author deals with this problem only in terms of vague generalities concerning the "authority" and the "impartial influence" of the United States. Apologists for England and France assert without an iota of proof that American non-participation was responsible for the failure of the League to impose effective sanctions and stop Italy in 1935. Could the United States as a League member have done more to stop Japan in 1931-32 than it actually did, in the face of British opposition?

Although by no means blind to the weaknesses of any system of world order organized on the principle of a standing diplomatic conference of sovereign states, such as the League of Nations, the author considers as impossible the adhesion of the United States to any combination, such as Union Now, which would mean the scrapping of national sovereignty. He is probably right. But he fails to note that the only alternative to real world order is shrewd, selfish, "all-out" participation in the international struggle for survival with the aim of maintaining a balance of power favorable to American interests. "Solutions" of the Versailles type provide no substantial security for anyone and put a premium on international faithlessness and violence by creating illusions in the minds of honest men and paralyzing their will to action. It is only in this sense that Hitler and his successes can be called products of Versailles.

OLIVER J. LISSITZYN.

*Council on Foreign Relations.*

*Prepare for Peace.* BY HENRY M. WRISTON. (New York: Harper and Brothers. 1941. Pp. 275. \$2.75.)

The continually increasing number of books and essays dealing with the peace which is to follow the present war seem mostly to be concerned with four main issues: (1) the time and conditions under which the war shall be ended and peace declared; (2) the specific terms of the peace; (3) the problems of the period of post-war reconstruction; and (4) the machinery and techniques for the solution of world problems and the creation of world organization. Mr. Wriston's concern is primarily with a generally neglected aspect, although he discusses at length the four issues just noted. He urges that preparing for peace calls for the same kind of strategy and planning as does a campaign for war. The war is a means deliberately adopted to make possible the establishment of an acceptable kind of peace, and the present war must be looked upon as such a means to a desired end. Will this war be won, he asks, and the peace again be lost, as in 1920? To win the peace this time requires the careful organization *now* of expert opinion, the anticipation *now* of the problems of nego-

tiation and diplomacy which must be faced at the peace conference, the laying *now* of alternative courses of action in the face of predictable alternative developments at the conference. The campaign to win the peace conference should now be under way. It should be worked out in as great detail as possible and should go beyond vague statements of peace aims. Not a blueprint for peace, but *many* alternative formulations of the peace must be conceived, so that all possible circumstances can be met. He approves in principle the steps already taken by the State Department, but points to their inadequacy in terms of scope, and in terms of the time and attention given by a staff already heavily burdened by the duties produced by the world crisis.

Mr. Wriston has described in extremely interesting and realistic fashion the highly intricate process of making peace. The volume reflects a rich background of understanding concerning the operations of international conferences and the influence of individual and national psychology. It is gratifying to see the publisher's awareness of the importance of this question, reflected in the issue of Mr. Wriston's manuscript in an attractive popular edition. In our democracy, public opinion still weighs heavily in the balance when governmental decisions are made. The more the requirements for creating a lasting peace are understood, the greater the prospects for its final achievement. There cannot be too many books of this kind.

WALTER H. C. LAVES.

*University of Chicago.*

*Hands Off: A History of the Monroe Doctrine.* BY DEXTER PERKINS (Boston: Little, Brown and Company. 1941. Pp. xiii, 455. \$3.50.)

*The United States as a Factor in World History.* BY THEODORE CLARKE SMITH (New York: Henry Holt and Company. 1941. Pp. viii, 142. \$1.00.)

Professor Dexter Perkins is well known as one of the leading authorities on the Monroe Doctrine through the previous publication of three monographs dealing with different periods of its history. His latest volume is, in a sense, a synthesis of the earlier volumes and, embodying a general survey of the whole history, will have a greater appeal for the general reader, or, at least, for the more thoughtful and sober-minded section of the general reading public. The striking title and the entertaining style, as well as the relegation of all footnotes and bibliographical data to the appendices, while making the book more attractive for the general reader, do not conceal its scholarly qualities.

The timeliness of the book is emphasized by recent speculations as to the ability of the United States to maintain the Doctrine in the face of the

growing menace of Nazi penetration in South America, especially below the bulge of Brazil, and by the growing realization of the American people of the extent to which its maintenance has been dependent on the British fleet. The book traces the history of the "principles of 1823," as the author prefers to call the Doctrine, from the earliest beginnings of the idea through the summer of 1940, including the Havana Conference of that date and the congressional joint resolution affirming the no-transfer rule. The most important chapters for the political scientist are those dealing with "The Doctrine and the League," "The Doctrine and the Good Neighbor" and the last chapter discussing Monroeism in its broad outlines, past, present, and future.

The author has examined with great care all important sources of information, both primary and secondary, and has worked not only in this country but in the principal archives of Europe. The book is not exhaustive in working out in fullest detail all possible phases of the subject, but as a general survey it covers adequately all the essentials. The ramifications of the principles of 1823 are so broad that an adequate treatment involves the rewriting of large portions of American history, selecting those events, tendencies, and utterances of statesmen which have some bearing on the development of Monroe's declaration. Professor Perkins has performed the work of selection with meticulous care and with conspicuous success.

In considering the fight in the Senate over the entrance of the United States into the League of Nations, the author brings out little that is new. Although he demonstrates that there is no necessary incompatibility between the principles of 1823 and the internationalist point of view as embodied in the Covenant of the League, he nevertheless shows that the Doctrine was used as one of the rallying cries by those who were opposed to the League.

The author raises, without definitely answering, the important question as to the applicability of the Doctrine to the ideological penetration of South America by the Nazis. He does not discuss specifically the effect of the radio and the bombing plane upon the Doctrine. The reader gathers, however, that he would consider the Doctrine, even though originally predicated upon the existence of the two spheres, to be sufficiently flexible to have continuing validity in a shrinking world. On the whole, and within his space limits, Professor Perkins has produced as nearly definitive a study as seems feasible in the case of a subject whose future development may be even more important than that of the past.

In his slim volume, Professor Smith has essayed, with considerable success, the difficult task of sketching, within very small compass, the entire history of the United States with special reference to its relations to world history.

JOHN M. MATHEWS.

*University of Illinois.*

*Legal Problems in the Far Eastern Conflict.* BY QUINCY WRIGHT, H. LAUTERPACHT, EDWIN M. BORCHARD, AND PHOEBE MORRISON. (New York: Institute of Pacific Relations. 1941. Pp. xi, 211. \$2.00.)

To the specialist on the Far East and to the international lawyer, this volume will be valuable and stimulating. It really consists of two parts: in the first, Professor Quincy Wright considers the legal aspects of nearly every important situation and issue in the Far East; in the second, Professors Lauterpacht, Wright, and Borchard, and a Round Table of the Virginia Beach Conference of the Institute of Pacific Relations, present conflicting views on the Non-Recognition Doctrine.

The topics discussed by Professor Wright include: the differences between *de jure* and *de facto* situations in the Far East; the status of Far Eastern territories; territorial rights within this region, as represented by extraterritoriality, leased territories, and treaty-port concessions and settlements; and the legal relations involved in the Far Eastern conflict. The value of this part of the book lies in the keenness of the analysis of the legal issues involved, the completeness of the documentation, and the clarity of presentation. With most of the legal views advanced, critics will be in complete agreement. With a few, however, there will be a measure of dissent, such as the contention that a declaration of war by a state which starts hostilities in violation of the Pact of Paris does not create a legal state of war (p. 93).

As to the principle of non-recognition, the differing points of view are ably presented. Professor Lauterpacht strongly approves it. He bases his argument on the well-known legal maxim *ex injuria jus non oritur*, and states: "The results of an illegal act [such as Japan's seizure of Manchuria] are a legal nullity; they are legally non-existent. The wrongdoer acquires no right under it" (p. 146). A declaration of non-recognition, he says, points out the existence of the illegality, and therefore helps to maintain the law.

Professor Borchard, on the other hand, disapproves the doctrine. He contends that for a state to attempt to judge whether a change, territorial or political, effected by another state is legal or illegal is generally impractical and often dangerous; that non-recognition "is an act of hostility"; and that, in actual practice, the attempt to apply the principle has not developed peaceful relations among nations, but has tended to create international friction.

The Virginia Beach Round Table gave a qualified and temporary approval of non-recognition: "For the time being, the majority considered it desirable . . . to support the doctrine, in the hope that the transition through which the world is passing can be made to yield a more effective international organization within which the non-recognition of *ultra vires* acts will be an essential element" (p. 184).



Professor Wright strongly supports non-recognition. He differs, however, with Professor Lauterpacht on a number of points, especially in maintaining that the Pact of Paris places a legal obligation on the signatories to refuse to recognize territorial changes brought about in violation of the pact. In the chapter entitled "Conclusion," he outlines his own views and gives a critical analysis of those of Professor Borchard.

A student either of the Far East or of American foreign policy will do well to read in full this detailed discussion of the highly controversial principle of non-recognition.

GEORGE H. BLAKESLEE.

*Clark University.*

*War and Diplomacy in Eastern Asia.* BY CLAUDE A. BUSS. (New York: The Macmillan Company. 1941. Pp. xi, 570. \$5.00.)

*The South Seas in the Modern World.* BY FELIX M. KEESING. (New York: The John Day Company. 1941. Pp. xv, 391. \$3.50.)

Professor Buss has written "an analysis of the contemporary political situation in Eastern Asia" in two approximately equal parts, the former dealing with the interests and policies of Japan and China, the latter with the interests and policies of Western states. He brings to his task not only academic study and travel but a period of experience in the American foreign service in China. Professor Keesing, after many earlier studies, which have established his authority in the field of his survey, "attempts to define comprehensively the political, strategic, and economic rôle . . . , and especially the modern experience and problems," of the peoples of Polynesia, Melanesia, and Micronesia. Both volumes contribute worthily to available materials—that of Professor Buss by a crisp analysis and well-balanced interpretation of the complex factors involved in the past decade of world politics in the Far East, that of Professor Keesing by assembling, in a style at once scholarly and readable, scattered data upon a little-known area.

Part I of *War and Diplomacy in Eastern Asia* contains six chapters, the first of which sets off the recovery efforts that began during the first World War against the decline of Chinese power under Western pressure for territorial and economic concessions during the nineteenth century. Subsequently there is treatment of the program and problems of Chinese nationalism, of Sino-Japanese relations culminating in war and a "New Order," of Japan's claims to a preferred position against Western interests and the effects of the war upon those interests, of the attempt and failure to apply the collective security system, and of the interaction of the European and Far Eastern wars. Part II deals in sequence with the interests and policies of the United Kingdom, France, Germany, the minor

European powers, the Soviet Union, and the United States. The volume is indexed, excellently printed and bound, and contains maps of China and of Southeastern Asia.

Dr. Buss writes in journalistic style, using a minimum of footnotes and numerous quotations, many of them from unnamed authors. Although bibliographical notes—on authors rather than on their writings—and a useful bibliography are appended, the book's utility as a text is somewhat limited by the scarcity of precise references. Students will, however, enjoy reading it and can do so with assurance, since the author amply demonstrates his command of the facts. For the lay reader, the reviewer knows of no book on this subject which is at once so comprehensive and so reliable. However, it takes for granted a general knowledge of historical and recent developments, which the author seeks to interpret rather than to record. His interpretation is impartial and internationalist in its attitude toward the motives and interests of all the states involved. He does not overlook the faults of the Chinese nor the needs of the Japanese. "No nation," he writes, "is completely guiltless, none is wholly at fault." He refers without smugness to the imperialist acts of Western states: "The only hope of peace, with mutual prosperity, lies in the wholesale abandonment of past misdeeds, and in the substitution of a sense of international obligation for false concepts of national honor."

*The South Seas in the Modern World*, which was issued under the auspices of the Institute of Pacific Relations and the University of Hawaii, is in the main a sociological survey, in which brief attention is given to governmental organization and to the Island groups as pawns in world politics. The text is a mine of information upon racial origins, development, and inter-action, economic resources and production, land policies, types of occupation, education, health, and religions. In sixty pages of appendices appear supplementary statistical data which are especially full regarding agricultural and mineral production and external trade. A lengthy bibliography, an index, and three maps drawn by the author round out this remarkable undertaking.

Professor Keesing remarks that "in a real sense the Western peoples are just a generation or two ahead of such groups in reshaping traditional tools, institutions, beliefs, and sentiments in the light of the machine age and modern science. . . ." He points to the influence of employment outside the native villages, of the white trader and the missionary, of the growth of towns, of Western administration, etc., upon native institutions, which are, however, resistant to arbitrary processes of change, and should not be hurried or held back but permitted to evolve according to native predilections. The difficulty of imposing Occidental principles of land tenure and taxation, of industry and business, of government and law, as discussed by the author, demonstrates that *difference* rather than *immaturity*

is the clue to readjustment. How medical, educational, and religious services have dealt with native ideas, and the requirement of more adequate attention to such services, as well as the most serious concern for the economic disorganization accompanying the increase of population and the loss of foreign markets, are very thoughtfully presented. Dr. Keesing has contributed notably to the treatment of the task which he lays upon the statesmanship of the next decade: to regard the islands "as an important charge upon its attention and constructive effort. . . ."

HAROLD S. QUIGLEY.

*University of Minnesota.*

*The Dutch East Indies; Its Government, Problems, and Politics.* Revised edition. BY AMRY VANDENBOSCH. (Berkeley: University of California Press. 1941. Pp. xii, 446. \$4.00.)

This very valuable account of the Dutch empire is a revised edition of the book which Professor Vandenbosch published about eight years ago. Considerable changes have occurred since then, both in the internal situation and in the international relations of the East Indies, and a detailed account of them has been embodied in the new edition. There is a concise but at the same time accurate and comprehensive account of every phase of the colonial problem. Professor Vandenbosch is exceedingly balanced and impartial: he presents a fair and objective picture of both the successes and the failures of Dutch colonial rule.

The first three chapters deal with the racial, social, and economic background. They are followed by an account of the evolution of Dutch colonial policy, from the exploitation of the East India Company and the culture system to the trusteeship of the present century. The next seven chapters describe the structure of government, the native states, and the civil service. The emphasis is placed upon the existing situation, but historical passages are of great assistance to readers unfamiliar with Dutch institutions. A very puzzling feature to a student of American or British colonial administration is that the Council of the East Indies, the body of high officials specifically created to advise the governor-general, does not include the department heads. The latter are responsible for carrying out and often for originating policy; and it is not surprising that their inability to state their case in person to the head of the government leads to a "bewildering lack of integration" in the administration. The salient impression left by the chapter on Indonesian nationalism is that of a multiplicity of small parties which are incapable of combining.

The chapter on the judiciary gives a good account of the policy of studying and preserving Indonesian customary law. This has been one of the wisest measures which the Dutch have adopted. There follow careful accounts of problems and policies in the fields of education, health, rural

debt, land, and labor. The chapter on government finance brings out a feature too often ignored in books on colonial administration, i.e., the problem of how to pay for the exceedingly expensive social services which liberal opinion insists must be established in the tropics. The stumbling block is that the native taxpayers have no money to pay for them since the vast majority live by subsistence agriculture. So the colonial government is confronted by the dilemma of utterly inadequate social services where the need is clamant, or else of creating the taxable capacity by encouraging Western capital to develop the natural resources of the country with all the problems which this entails. Professor Vandenbosch points out that the extensive agricultural and mining interests are as much the result of Dutch humanitarianism as of the desire for profit. Altogether, this is easily the best account of the Dutch Empire in the English language.

LENNOX A. MILLS.

*University of Minnesota.*

*Sea Power in the Machine Age.* BY BERNARD BRODIE. (Princeton: Princeton University Press. 1941. Pp. viii, 451. \$3.75.)

A selection of the Scientific Book Club, this work details with admirable skill and honest craftsmanship the five great naval developments that bridge and span between Trafalgar and today's naval battles. The first is the steam warship which, by canceling out the influence of the wind, changed the whole complexion of sea power and introduced the all-important fuel problem into world political calculations. The second, the iron-hulled warship, resulting from the competition between armor and great ordnance, arrested the threat of extinction to the large warship of the time, and assured its renewed growth in size and strength to the great "capital ship" of the modern navy. But the old race between guns and armor kept pace with the changes in naval craft. This conflict is the third great development described by Dr. Brodie, and is one of the most interesting features of the book. Armor became thicker and more rugged as ordnance challenged it with more powerful guns, armor-piercing projectiles, and associated mechanisms. Extraordinary results followed. Large vessels cost more, took longer to build, were limited in number, and became highly specialized. Personnel training changed. Naval battles took place at greater range and with more chances of quick decision.

Significantly, too, the competition stimulated the search for underwater attack. At the same time, armor and ordnance had to face the serious challenge of aircraft. With these two remaining revolutionary developments, naval warfare entered new dimensions. Easier to produce and relatively low in costs, the torpedo, mine, and submarine were conceived as defenses against superior sea power. Their effectiveness lies in concealment and in their ability to strike at the more vulnerable parts of the surface vessel.

Also relying upon concealment, freedom to seek out and surprise vulnerable targets, and swift attack in numbers, aircraft not only challenges sea power in coastal waters and near its own bases, but makes possible, at least against countries situated like Britain, violent attack on land objectives over waters commanded by the opposing fleet.

In drawing general conclusions from all these technical changes, the author is at his best in the field of naval tactics and strategy, and weakest in the larger field of world politics. Unless technical developments are also assessed in terms of the larger human struggle they serve, it avails little to show that sea power is rapidly specializing within three dimensions, that enhanced contact at sea keeps fleets closer to home, that long-range blockade supersedes the old close blockade, and that new weapons have not yet outmoded the capital ship nor seriously destroyed the favored balance shore defenses enjoy over naval assault. Here and there, Dr. Brodie draws some of the obvious conclusions, such as the intensified struggle for fuel and raw materials, the restriction of naval theaters of action to regional areas which a strong industrial and military power may dominate, and the crushing burden of increasing naval budgets. But he does not go much beyond them. Perhaps the trouble lies in the fact that the technics of sea power alone, however revolutionary, are after all insignificant in the larger pattern of human affairs. The author himself observes: ". . . on the sea itself much is unaltered. . . . Sail gives way to steam and timber walls to iron, vessels of war take cover in the depths of the sea and spread their wings far above the crests of the waves, but naval war remains much the same in its purposes and in its accomplishments." This is an important conclusion and, if true, a real contribution to scholarship; for it invites students to examine the more fundamental springs of technology rather than its collateral manifestations, in order to assess its influence upon the traditional pattern of world politics.

GEORGE H. E. SMITH.

*Yale University.*

*The Armed Forces of the Pacific.* BY CAPTAIN W. D. PULESTON. (New Haven: Yale University Press. 1941. Pp. xiv, 273. \$2.75.)

The darkening shadow of war over the Pacific during recent months highlights this timely volume which, as its subtitle states, is "a comparison of the military and naval power of the United States and Japan." Captain Puleston should be well qualified to speak on this subject after a long and distinguished naval career which included the course at the Naval War College, service on the Asiatic Station, and a tour of duty as Director of Naval Intelligence. He is better known in civilian circles for his comprehensive and readable biography of Mahan published in 1939.

Captain Puleston's latest book opens with a brief sketch of "the rise of

modern Japan." This is followed by a survey of "Japanese military organization," a chapter which contains much of importance to students of government and administration. The same can be said of the ensuing chapter on "the American high command," in which the author describes our own military structure, the hierarchy of command, Army and Navy administration, war planning, the coordination of the land, sea, and air forces, etc. In a chapter on military geography, the author comes to the generally accepted conclusion among experts, that "the position of the United States in the Far East" is today one of great potential strength; that of Japan, one of inherent weakness. From descriptive and statistical comparisons, he reaches a similar conclusion as to the actual relative strength and efficiency of the Japanese and American navies, a conclusion with which some authorities, though not this reviewer, would probably take issue. In his sections on strategy and tactics, the author tends on the whole to follow conventional paths. Rather too little, in the judgment of the reviewer, is said about some of the newer weapons and formations, such as current and prospective developments in long-range bombing, the potentialities of carrier-based torpedo planes, the so-called carrier-striking-group, etc. These omissions are serious, the more so because it may be these newer weapons, rather than massed fleets, which will strike the decisive blows in case of armed conflict in the Pacific.

In conclusion, the author urges a more aggressive foreign policy which will enable the United States to achieve what the author forcefully sets forth as the manifest destiny of this country to become the world's leading power in the years ahead. Admiral H. E. Yarnell contributes a thoughtful, well-written Foreword. The book has no documentation or bibliography, but there is an adequate index which enhances its utility for reference purposes. Although obviously written for the general reader, the volume contains much that will be useful for the special student of government, administration, military geography, and international politics. Captain Puleston does well what he set out to do, and is to be congratulated for thus contributing a timely addition to the rapidly growing literature of power politics.

HAROLD H. SPROUT.

*Princeton University.*

## BRIEFER NOTICES

### AMERICAN GOVERNMENT AND POLITICS

In his thought-provoking volume, *We Have a Future* (Princeton University Press, pp. viii, 236, \$2.50), Norman Thomas writes upon our failure as a nation to take advantage of our resources and our abilities, of our losses from not making proper use of our favored position, and of our fu-

ture—a future that offers much if we profit from mistakes and plan for the future along the avenues outlined in his concluding chapters. Asserting that the Peter Pan epoch of American life is at an end, that capitalism has failed, and that Americans refuse to face realities, the author outlines the chief provisions of his plan for internal improvement within the United States. He concludes: “We must produce more, share it more equitably, and in the process add to, not subtract from, the dignity of the individual.” With respect to our form of government, the author finds that the Roosevelt Supreme Court has made drastic reform of that tribunal unnecessary. He favors the direct popular election of the president and a modification of our party system such that third parties might develop. In foreign affairs, Mr. Thomas opposes the entrance of the United States into the war. Of particular note is the statement, written in the spring of 1941, that an alliance between China, the U.S.S.R., Great Britain, and the United States is “politically unthinkable.” Few readers will disagree with the author’s fear of Russian communism, but many might differ as to the relative danger to the United States from Hitler and Stalin. As for Mr. Thomas, he “can imagine no events which will change my own judgment on the war, and our duty toward it.” The volume is a clear and vivid account of the author’s views on the immediate past and on the future of the United States.—ROBERT S. RANKIN.

In his *The Deflation of American Ideals; An Ethical Guide for New Dealers* (American Council on Public Affairs, pp. 184, cloth \$2.50, paper \$2.00), Edgar Kemler, a young editorial assistant on *The Nation* in 1937, research assistant for the Democratic National Committee in 1940, and Littauer fellow at Harvard in 1940–41, reviews the history of American progressives and concludes that, until quite recently, they have seriously impaired the effectiveness of their efforts by mixing Christian and Puritan ideas with their political programs. He says, for example, that the old progressives “were as much concerned with saloons and houses of ill-fame as they were with traction franchises” (p. 27). The author maintains that the depression forced a “Flight of the Angels,” a descent to “Political Animalism.” He explains that this leaves sin in the exclusive jurisdiction of the churches and frees public men to deal with the hard facts of economics. He notes with satisfaction that President Wilson laid aside some of his concern about the evils of the party organization in order to get his measures through Congress, and he praises the New Dealers for being the first progressives to rid themselves of the last vestige of political prudery and beat the conservatives at their own game. “An economic despotism had grown up in the shelter of this free country,” he writes. “It was an almost invulnerable stronghold, entrenched behind barricades of newspapers, political hirelings without number, and vast resources for confusing and frustrating

the public. What we needed was a progressive army with comparable political power, with full equipment for defense and counter-attack. If they had holding companies, we must have trade unions. If they suppressed some of our civil liberties, we must suppress some of theirs. If they had their political hirelings in the Republican party, we must secure ours in the Democratic party" (p. 112). This sprightly volume of stark realism will probably meet with considerable favor among the more intellectual supporters of the New Deal Administration. At the same time, it may be quoted in the hinterlands as proof of the amorality of the New Dealers. Although students of American politics and political theory may object to some of the author's generalizations and question his low estimate of the weight of moral forces in public affairs, they will read his stimulating volume with profit.—CLAUDIUS O. JOHNSON.

The latest recommended manual on official etiquette, in which all citizens should be potentially interested, is *Public Relations of Public Personnel Agencies; A Report to the Civil Service Assembly* (Civil Service Assembly of the United States and Canada, pp. xviii, 259). Public relations are defined as those that "have to do with the development and maintenance by any legitimate means of favorable attitudes on the part of the people with whom any agency comes into contact." The exclusion of the base forms of propaganda is the contribution of this definition. Through the prescribed activities of the agency—self-criticism, the exploration and assessment of the attitudes of the publics, and the making of the necessary adjustments—runs a known theme in special variation: whenever a personnel agency allows information and understanding to flow both ways, from agency to publics and from publics to agency, the result is a contented and efficient democratic civil service instead of an arbitrary bureaucracy. The manual has accepted some implied theory of why man acts as he does and has approved the psychological formulas for eliciting public attitudes. Its chief contribution, however, is the assessment of practices, private and public, and the recommendation of the best to be followed by the personnel agencies. It appears, too, that an ideal touch has been added for those who can use it. The body of the manual is divided into three parts. The first is an excellent analysis of the agency's publics, such as the three departments of government, interest groups and the press, and their attitudes; the second deals with the usual media—reports, newspapers, radio, movies and personal contacts; and the third is a documentation of methods actually used by certain agencies. One is impressed by the possibility of fatal blunders if the manual's detailed directions are not carried out. The manual's rules of etiquette need not frighten the official any more than similar prescriptions do the private individual in his social activities. It is to be hoped that the Civil Service Assembly will adopt



this textbook as a working basis for all public personnel agencies. The report concludes in metaphorical terms with a plea for a two-way street.—J. P. COMER.

Those who think of N.Y.A. as aid to college administrators in keeping up the level of tuition income, or of N.Y.A. and C.C.C. as being outmoded by current defense production, will find food for thought in *Youth Work Programs; Problems and Policies* (American Council on Education, pp. vii, 195, \$1.75), by Lewis L. Lorwin. He points out the confused motivation of such programs. The purpose may be relief, as it was during the depression, or vocational training and guidance. The program should be "geared both to a public works policy and to schemes for general social-economic development." For the author, the high purpose of such a program is the equalization of educational and economic opportunity for youth. He is concerned with the "purpose and character" of a works program for youth and how it "should be planned and carried out." He does not attempt an "analysis of the historical conditions which underlie current youth work programs." This is to be the subject of an early report by the American Youth Commission. Students of political science will be interested in the author's comments on the effectiveness of decentralized control in the administration of N.Y.A. (pp. 137-9). He thinks it was carried too far with N.Y.A. This is a well written and stimulating study of the aims and problems of programs for underprivileged youth. It belongs on the "must list" of educators, C.C.C. and N.Y.A. administrators, and all others interested in youth guidance or vocational education. William Healy and Benedict S. Alper consider the problems of criminal youth in their *Criminal Youth and the Borstal System* (Commonwealth Fund, pp. vi, 251, \$1.50), a study of the system of treatment of youthful criminals in England. Borstal takes its name from the village near Rochester in England at which the first such institution was founded. The book is an analysis of the humane and intelligent system used for dealing with young criminals in England. The authors attempt not only to give a picture of the ten-odd institutions making up the Borstal system as it was at the outbreak of the present war, but also by critical comment on both the Borstal system and our American reformatories to lay down the main principles which should guide a humane and intelligent approach to the young criminal. Their two main criticisms of the Borstal system in England are its failure to employ psychiatry in dealing with abnormal cases, and the disadvantages of a commitment law which prevents holding any cases beyond four years of institutional and parole attention. To one interested in governmental policies, the most interesting part of the book is the analysis of the character of those who man the institutions. No uniformed guards; no guns; in some institutions, no gates or bars—testifying to the effective-

ness of the recruitment policies followed by the Prison Commission in coöperation with the civil service. This is a thought-provoking study, and it offers sound guidance for improvement of our own state prisons and reformatories, beginning with improvement of personnel.—ROBERT W. McCULLOCH.

In his *Sixty Years of Indian Affairs* (University of North Carolina Press, pp. 428, \$5.00), George Dewey Harmon deals with the relationship between the United States and the Indian peoples within our expanding domain between the years 1789 and 1850. If it were not history, the study could be called the story of Uncle Sam's struggle with his conscience. The problems involved were not initially of the making of the administrations of President Washington and his successors, but were shaped in large part by the earlier activities of the British and French and Spanish and colonial governments, and were modified for many years by the continued activities of rival nations or their peoples upon the American continent. The government dealt with the Indians as sovereign, yet administered affairs as though they were wards; the government acknowledged the Indians as proprietors, yet felt free to push them from place to place and permit relentless white settlers to take their lands. With strange inconsistency, under solemn treaties the government protected not the Indians but the whites. Yet from the very beginning the government recognized the importance of educating and Christianizing the Indian people and of teaching them thrift and industry and the love of individual ownership of land. We wonder at the responsibility placed under the early treaties upon the undisciplined Indian peoples in the protection of their rights "to drive off the settler, or punish him in such manner as they shall see fit"; we wonder at the loose way in which monies were handled by the agents for the government for the purchase of gifts, supplying needs, etc., and with no adequate supervision from the Washington office. The book is well documented, splendidly supported by brief quotations and footnotes, and throughout is written in scholarly fashion.—BURTON L. FRENCH.

*The Foreign Policy of Thomas F. Bayard, 1885-1897* (Fordham University Press, pp. 800, \$5.00), by Charles C. Tansill, covers in great detail a very short but important period of American foreign relations, and for scholars in this field, Dr. Tansill's book is invaluable. In minute detail, the author covers many important questions of the time in our relations with Samoa, Great Britain, Canada, Mexico, and Germany. Extensive quotations from the voluminous Bayard Papers in the Library of Congress, as well as many other documentary sources of information, are used by Dr. Tansill to illustrate and prove his points. Because of the fact that Dr. Tansill has placed so much emphasis on even minor details of this inviting

period of American history, his book is not easy to read. It is encyclopedic in nature. The author treats at some length Bayard's advocacy of close Anglo-American coöperation, and this definitely increases the interest in his book in the light of present-day foreign policy. That Bayard is a hero to Professor Tansill and that he is regarded as an outstanding American statesman too long neglected by our historians are made clear throughout the book. These facts do not, however, minimize the importance of Dr. Tansill's contribution to American history. Extensive documentation indicates the tremendous amount of material covered by the author in preparing the volume.—CARL M. FRASURE.

In his *Constitutional Government*, Woodrow Wilson describes senators as representing regions of the country. This description fits Henry Moore Teller, whose biography, *Henry Moore Teller, Defender of the West* (Caxton Press, pp. 401, \$5.00), by Elmer Ellis, depicts territorial representation. When Teller was United States Senator from Colorado, that state was surrounded on all sides by territories. He became the voice of the entire area and an astute student of territorial problems. For more than thirty years, he served in Washington as senator and cabinet member. His life had in it something of the romance of the country. Born and reared in western New York, he lived in central Illinois from 1858 to 1861 and knew Lincoln as candidate for both senator and president. In 1861, he went to Colorado for a month, and he stayed the rest of his life. As a senator, he was a useful public servant. Although not a colorful figure, he was a man of integrity and ability. Like most frontiersmen, he was opposed to conservation, and like many citizens of Colorado, he favored free silver. As Secretary of the Interior, his knowledge of Indian affairs was at the disposal of the nation. The book is interesting, well documented, and nicely printed.—PAUL M. CUNCANNON.

Providing suitable supplementary reading materials for students in the introductory course in American government is a problem which college teachers face perennially. Often the available materials are discovered to be too advanced, too diversified, or too dull, and consequently few students make use of them. *The People, Politics, and the Politician* (Henry Holt and Co., pp. x, 1001, \$3.25), by A. N. Christiansen and E. M. Kirkpatrick, is a collection of one hundred and twenty selections which is designed to meet this need. The topics are arranged to coincide with the order of treatment followed in those textbooks employing the so-called functional approach, but this should not prevent use of these readings in conjunction with textbooks based on the traditional "three level" plan. The selections, with very few exceptions, consist of articles or excerpts from lengthier writings. No mere accumulation of additional details and

facts, they have evidently been chosen with the primary purpose of stimulating the student's interest in public affairs and of assisting him in formulating judgments upon controversial issues and problems. Explanatory notes given at the beginning of each chapter and an appended series of short biographical notes on the authors whose works are used should be helpful in enabling the reader to gain a proper perspective. While limitations on space have prevented presentation of completely rounded discussions on all topics treated, the choice of selections reveals a keen appreciation of the type of material which undergraduate students will find interesting and illuminating. Here is a book of readings which most of them will actually read.—JOSEPH E. KALLENBACH.

*The Book of the States, 1941-1942* (Council of State Governments, pp. xii, 423, \$3.50), like its predecessors, contains valuable information on state organization, personnel, legislative sessions, and the activities of the Council of State Governments in assisting states to solve their problems of legislation and administration, notably in connection with the national defense program, state trade barriers, and interstate coöperation. The tables included have increased in number to more than a hundred. Some of the newer ones give data on the assessed valuation of property, state and local debt behavior, ballot forms and voting qualifications, state defense agencies, legislative procedure, judicial tenure, and constitutional amendment procedure. In addition, brief articles give the "news" on recent developments in the field of social security, federal grants to the states, the merit system, judicial and legislative councils, declaratory judgments, and arbitration legislation. The volume closes with the usual bibliography and roster of state officers. The value of future editions will be enhanced if tables are included, giving (1) constitutional limitations upon the legislatures with respect to special, private, or local laws; (2) the number, names, and size of legislative committees; (3) the origins of recent constitution-amending proposals—(a) in constitutional conventions, (b) in legislative action, (c) in the popular initiative; and (4) proposed laws recently voted upon under the *statutory* initiative and referendum.—P. O. RAY.

The national defense program has affected various cities in different ways and has brought them new problems. Municipal officials and others interested in municipal problems of today will welcome *Cities and the National Defense Program* (American Municipal Association, pp. vi, 73, \$1.00), by Arnold Miles and Roy H. Owsley. The first three chapters describe typical effects of the defense program on cities, and the fourth discusses "problems still largely unsolved" and indicates "desirable machinery for securing proper solutions." This bulletin is a follow-up of the American Municipal Association's bulletins, *The British Defense Program*

and *Local Government*, published in 1940. Chapter I describes the early effects on cities of the selective draft and National Guard acts, alien registration, investigation of espionage and sabotage, and the organization of defense councils. Chapter II describes actions dependent on state leadership, actions taken on federal recommendation, and actions taken on local initiative. The third chapter presents the situation in regard to the "Defense-Connected City." In connection with these "boom" areas, the discussion centers around housing, airports, highways and traffic, public health, and law enforcement. The last chapter presents unsolved problems in the fields of finance, law enforcement, housing, personnel, planning, and the coordination of community facilities. Definite suggestions as to what the federal government, state governments, and cities should do are included in the kind of action required to bring some order in our complex governmental system now under stress of the all-out defense program.—KENNETH P. VINSEL.

Every professional student of politics must have had occasion frequently within the past decade to reflect upon both the number and quality of the researches and surveys on social and economic problems published by the United States Government and to feel grateful—when it proves impossible to secure them free—for the low prices which the Superintendent of Documents maintains. *Strikes in Defense Industries* (Government Printing Office, pp. vii, 299, \$0.25) brings another such occasion. In this calm and tempered study, undertaken at the request of the chairman of the Senate Committee on Education and Labor by the Legislative Reference Service of the Library of Congress, eight members of its Defense Service Section have brought together the salient statistical facts about defense labor disputes, summarized national and state law on labor relations, described administrative agencies and procedures available for the settlement of controversies both now and in the first World War and both here and abroad, and finally indicated some of the factors in the economic and cultural significance of strikes. All this adds up to a convenient and authentic summary of "government in relation to labor" *au courant* as of May, 1941. There is a valuable catalogue of methods of industrial peace (pp. 13-16), and the reprint of the National Labor Relations Board's description of the notorious "Mohawk Valley Formula" (pp. 51-52) is useful. Skilful direction by Leifur Magnusson offsets whatever disadvantages may lie in plural authorship.—JOHN A. VIEG.

The Bureau of Government of the University of Michigan has published as its seventh study *Voting Behavior in a Metropolitan Area* (pp. 94, \$0.50), by Edward H. Litchfield—a doctoral dissertation built upon the efforts of many individuals in addition to the author—and the Bureau

is to be congratulated upon its contributions to the understanding of American politics in general and of Detroit politics in particular. The materials in the study point in one direction, but it is a direction in which the author was apparently reluctant to go. In his conclusion, he pays lip service to Holcombe's thesis about the rôle of the middle classes in softening class conflicts in the United States, but his fingers all point in the opposite direction. They show that there is an increasing class conflict in American politics. The middle classes are tending to side with the upper income groups in this struggle; and the upper income groups are becoming the most decided in their views. The public opinion polls for 1940 corroborate this. Regarding the methods of investigation used, several comments might be made. The relevant literature on the subject was not exhausted. The author failed to give sufficient background material so that the figures could take on meaning. This applies especially to the chapter on third parties. Correlational methods were avoided, apparently because of the amount of work involved; but with the new machine methods for calculating the coefficients, this should be no obstacle. The author fails to indicate the changes that have taken place in absolute numbers of registered voters and persons voting. In other words, the reader cannot get the full significance of the figures without doing a little research of his own on Detroit politics. The methods employed to calculate where a precinct should be placed in the income classification are open to serious objections which could be removed by using the 1940 census tract data.—HAROLD F. GOSNELL.

*Investigation of Concentration of Economic Power* (United States Government Printing Office, pp. ix, 782) is the final report of the Temporary National Economic Committee created by Congress in 1938. Thirty-one volumes of hearings and forty-three research monographs preceded it. The committee's summary statement and recommendations comprise only forty-three pages, while a verbatim report of the public sessions to consider recommendations, a brief history of the committee, and numerous appendix materials make up the bulk of the volume. Concentration of economic power is held to be the foundation of political dictatorship, and therefore a danger to democracy. This does not require the abolition of large-scale collective enterprise, but the social and economic responsibilities of such enterprise need emphasis. Specific recommendations for congressional action are made in connection with patents, trade associations, corporate mergers, and insurance. General recommendations also are submitted, all emphasizing the importance of competition and the importance of encouraging private investment in new enterprises. The committee favors less participation in business by government, vigorous enforcement of the antitrust laws, removal of interstate trade barriers, repeal of price-

fixing laws, and lower taxes on income from investments in new, independent businesses.—CHRISTIAN L. LARSEN.

*Labor Cases and Materials* (F. S. Crofts and Co., pp. xv, 674, \$4.00), by Carl Raushenbush and Emanuel Steirs, is additional evidence that authors are recognizing that the subject of the relationship of government to labor can and should be treated as a unit for purposes of study. As its title indicates, the book is a collection of United States and state court cases, articles, statutes, and other documents dealing with various phases of the relationship between labor and government. One of the valuable features is a series of comments and explanations written by the authors at the beginning of the various chapters and sub-divisions of chapters, making this a combination of case-book and text-book. Oftentimes, attempts to combine textual and case material result in an unusable hodge-podge. In this book, however, the authors have been quite successful in combining the two types of material and developing a very usable and complete text. In fact, the only criticism which the reviewer has to offer is that the scope of the material is almost too comprehensive. If it be a fault, this is perhaps a happy one, since any person using the book has a wide choice of material from which to select and adapt to his needs and uses.—FORD P. HALL.

One corner of the fiscal problems that arise in war and preparation for war is explored in *National Defense and State Finance* (Bureau of Public Administration, University of Alabama, pp. v., 180)—a series of eleven papers presented at a Southwide conference at the University of Alabama to consider the problems indicated in the title. Two papers survey the experience of Canada and Australia, two cover that of the United States in the first World War, one recounts the spending program of 1933-40, one prophesies with reference to the current national defense program, four consider the state problems of budgets, services, revenues, and the future, and finally there is a treatment of the economic effects of the defense program on the South. The papers are excellent reports on the topics considered. The few pages allotted to each have been fully utilized to present the important data, with expert generalizations based on that data. The men chosen to present these papers are experts on the topics discussed. None of them is sanguine, and their papers indicate fully why they are not.—CHARLES B. HAGAN.

*North Carolina Boundary Disputes Involving her Southern Lines* (University of North Carolina Press, pp. 250, \$1.25), by Dr. Marvin Skaggs, is Volume 25, No. 1, in the James Sprunt Studies in History and Political Science published under the direction of the departments of history and political science of the University of North Carolina. Dr. Skaggs

has carefully utilized all the mechanics of scholarship, multitudinous footnotes, voluminous bibliography, and a complete index to a rather small and specialized subject. He justifies his interest in boundary disputes somewhat pretentiously: "Such important questions as security of territory, the rights of states, peace and war, economic welfare, right of settlement, national politics, national expansion, international relations, and even the existence of the states and the Union, were involved." He has concentrated his study on the disputes between the Carolinas and between North Carolina and Georgia, disputes noteworthy for their length and complications; and all of them he treats with meticulous detail. Dr. Skaggs has worked largely with primary sources, including much manuscript material, and the Southern historian will find in his book much interesting and hitherto unpublished information.—MARIAN D. IRISH.

In *The Clarks; An American Phenomenon* (Silver Bow Press, pp. 257, \$2.50), William D. Mangam tells the sordid story of William Andrews Clark, mine-owner, senator, multi-millionaire. "The richest man in Montana he had wanted to be, and he became one of the richest men in America. He wanted to be a senator and as a senator he is known. . . . When he died he was called a king by reason of his wealth and power. . . . But no great friendship ever came to him" (p. 93). Born in 1839, Clark profited from the Western copper mines. When he died, in 1925, he left a fortune of \$200,000,000. The political scientist will find a dramatic case study in the first chapter, with its description of Clark's conquests in Montana and the account of his corrupt election to the United States Senate. In the following chapters, which rehearse the tale of his *amours* and the life history of each of his four children, there is a sickening, disgusting recital of disgraceful dishonesty and depravity. Yet Professor Edward A. Ross says, in an Introduction: "It is a priceless social document. It may be that the author's cool matter-of-fact setting forth of the most damaging truths may launch a new model of biography, viz., *social* biography."—MONA FLETCHER.

#### FOREIGN GOVERNMENT AND POLITICS

The German administration of criminal justice, which in no way can be compared with any Anglo-Saxonian court system, is one of the most interesting phenomena of modern political science. It took a decisive part in the development of the National Socialist régime, and at the present time it is one of its most important administrative wheels. Two classical books, written by eminent journalists, cover the functioning of criminal justice in the German Empire and in the Weimar Republic: Maximilian Harden, *Prozesse* (1913), and Sling, *Richter und Gerichtete* (1929). Now, we are for-



fortunate enough to be also in possession of a fascinating and comprehensive description of Nazi criminal justice until 1939: *Skeleton of Justice* (E. P. Dutton and Co., pp. 346, \$3.00), by Edith Roper and Clara Leiser. The strength of the book lies in the fact that Edith Roper, in her capacity as a court reporter in Hitler's Germany, gives an unemotional and accurate account of crime cases and their administrative handling by the "legal" officers. The "cold method" of backing militarism and bureaucracy by court decisions, applied by the judges of Wilhelm II and of the Weimar Republic, is transformed today in the open terror executed in the interest of the Nazi system by the "legal" officials. They are not judges, but a kind of higher police officials administering political reactions, religious feelings, currency restrictions, sex relations, as well as the general public safety. And all this is done in the name of the Fuehrer, who claims to be the "Supreme Judge of Germany." The cases described and analyzed by Miss Roper reveal that this administration of justice by summary procedure is nothing else than the expression of the totalitarian police régime. Analyzing her exposition, together with some statistical material collected by the reviewer, one finds that the results of the system are very poor even from the viewpoint of its initiators. The increase of political crimes, of sex crimes, and of juvenile gangsterism in Hitler's Reich are significant. The material contributed by Miss Roper, together with its organization and interpretation by Miss Leiser, make *Skeleton of Justice* a genuine contribution in the field of totalitarian judicial methods.—ROBERT M. W. KEMPNER.

Week by week and hour by hour, the extant democracies are adapting their public policies to the exigencies of a world at war. Not only do central governments face this challenge, but local administration must adapt itself as well in order to survive. James L. Sundquist prepared for the American Municipal Association a report on *British Cities at War* (Public Administration Service, No. 76, pp. vi, 110, \$1.00) by digesting, compiling, and excerpting from current English periodicals. It covers those months of intensified hostilities from about July, 1940, to May, 1941, when all-out German raids showered bombs on focal British centers of industry, commerce, history, and culture. Without attempting to dramatize this thunder and lightning air war, the survey indicates systematically the manifold adjustments undertaken to cope with the crucial circumstances in local administration and in central-local relations. The most careful pre-war plans proved under fire to be superfluous in some respects and wholly inadequate in others. So the English people proceeded characteristically without any five- or ten-year schemes for "the duration," but on a pragmatic policy of adjusting local services to the demands of the moment. For example, the extensive preparations for gas attacks and the organization

of decontamination squads were not called into operation during this phase. The rain of fire bombs, however, precipitated the most drastic single reorganization. Some 1,400 fire departments in Great Britain were nationalized. Lack of big, mobile fire brigades and insufficiency of mutual-aid plans led to centralization. Fourteen regional commissioners were placed in charge of integrating civil defense on the home front and stood in a unique capacity mid-way between central and local levels of government. The central government removed from local units any responsibility for care of the aged, and assumed virtually all of the new burden of relieving distress arising directly or indirectly from the war. Grant-in-aid policies turned upwards. The list of enterprises for which the national government announced one hundred per cent grants was expanded to include certain types of A.R.P. expenditure, including shelters, removal of debris, salvage of personal property, evacuation, and salaries for full-time civil defense workers. All these emergency measures are described in this brochure, as well as the organization of volunteers, black-outs, air raid incident services, relief of injured, repair of homes, salvage, even municipal farming and restaurants. Nor is the impact of the war on normal municipal functions overlooked. Mr. Sundquist has performed a real service in bringing these materials together in a well-organized monograph.—A. W. BROM-AGE.

B. K. Long's *Drummond Chaplin* (Oxford University Press, pp. vi, 373, \$5.50) is the biography of an Englishman who devoted his life to furthering imperialistic enterprises which Cecil Rhodes had opened up in Southern Africa. Among these projects was unification of British colonies and Boer republics in South Africa under the British flag. Drummond Chaplin, who as Joint Manager of Gold Fields, Consolidated, had been active in Transvaal politics after the Boer War, was an outstanding supporter of Jameson, leader of the Unionist Opposition in the first sessions of the Union House of Assembly. In 1914, Chaplin severed his business and political connections in the Union to become Administrator of Southern Rhodesia during its period of transition from a possession of the British South Africa Company to a crown colony. After the electorate of Southern Rhodesia voted in 1923 for responsible government in preference to incorporation in the Union, Chaplin returned to South Africa. As a South African party follower of General Smuts, he sat in the House from 1924 to 1929, when he failed to secure renomination. British imperialism in Southern Africa is depicted by the author in a highly flattering light. Chaplin was uncompromisingly in favor of maintaining a preponderant British influence there, and had hoped Southern Rhodesia would serve that cause by entering the Union. Although Sir Drummond will be remembered as an administrator rather than as a political leader, the book is of interest to

the political scientist chiefly for the author's analysis of South African politics at the formation of the Union. Material included from Chaplin's files would have been of greater value to the student of British imperialism had it dealt less with personal matters and more extensively with Chaplin's rise to prominence in the mining industry (under the sponsorship of Rhodes just prior to his death), and with his subsequent public service. A table of contents would have made the volume more useful.—LUCRETIA L. ILSLEY.

*Canada Fights; An American Democracy at War* (Farrar and Rinehart, pp. vi, 274, \$2.00), edited by John W. Dafoe, is a book written for American consumption, describing the rôle of Canada both in the European war and in the defense of the northern half of the Western Hemisphere. It is the joint work of a group of Canadians (five journalists and a professor), under the editorship of the eminent journalist, J. W. Dafoe. The spirit of the book is broadly Liberal, in the party sense, and North American. It is avowedly propagandist, in the sense of seeking to inform the American public of Canada's rôle and of putting this in the best light possible, while admitting the occasional home truth. It is deliberately popular in character, but contains much that is of interest to the specialist concerning war economics (Chapter 4) and North American joint defense (Chapters 7, 8). "What Is Canada" (Chapter 2) adds nothing to recent literature on Canada by Siegfried, F. R. Scott, and MacKay and Rogers. Chapter 3—"Why Canada Is at War"—exaggerates the clarity of purpose among Canadians at war and overestimates the importance of Canada's own initiative in declaring war. Those interested in the ideological side of war policy will be somewhat disappointed with Chapter 6 ("Maintaining the Front at Home"), which tends to be politically partisan in defending the present government and conveys a totally wrong impression concerning the state of civil liberty in Canada, and with Chapter 9 ("Canada and the Post-War Period"), which somewhat vaguely favors "the general idea of a universal association of regional groupings."—H. G. SKILLING.

The subject of Orwell de R. Foenander's *Solving Labour Problems in Australia* (Melbourne University Press, pp. xxxv, 168, 15s) is much narrower than the title indicates. The book continues the study of the Commonwealth Court of Conciliation and Arbitration which the author began in his earlier volume, *Towards Industrial Peace in Australia*, and concentrates upon the experience of the past four years. The emphasis is upon detailed analysis of wage and hour awards in various fields, with little general consideration of the effectiveness of the system in preserving industrial peace. However, two chapters are devoted to the relative failure of the Court in dealing with the coal industry. Changes in the Court's ma-

chinery and powers due to war-time exigencies are noted. The relationship between the federal Court and the various state industrial tribunals has also become of increasing importance under war conditions, and efforts are being made to prevent this dualism of authority from blocking effective control. No attempt is made to compare the judicial approach of the Australian system with the administrative process of, say, the Fair Labor Standards Act. But there is a surprising statement to the effect that the N.R.A. was set up in imitation of the Commonwealth Court.—C. HERMAN PRITCHETT.

The *Indicador da organização administrativa do executiva federal* (pp. 569) issued by the Departamento Administrativo do Serviço Publica of Brazil in 1940 furnished for the first time a directory of all agencies of the federal government of Brazil functioning at the time of compilation. At the beginning is listed the president of the Republic with the agencies operating immediately under his direction. Then follow the ministries in alphabetical order, each accompanied by the agencies subordinate. Under each agency is given a reference to the basic laws or decrees establishing the organization, the chief officer (in the case of commissions the membership), and the address. The publication presents for the first time in all of Latin America an attempt at a comprehensive government directory, making it possible for one to secure a quick, detailed, and accurate picture of the national administrative structure.—J. B. CHILDS.

#### INTERNATIONAL LAW AND RELATIONS

Both in terms of United States policy toward the present world war and in terms of the organization of peace at its conclusion, Cleona Lewis' *Nazi Europe and World Trade* (Brookings Institution, pp. xi, 200, \$2.00) is packed full of important data. It is an effort to analyze the trade situation which will exist at the end of the war if Germany dominates all of continental Europe west of Russia. All discussions of American policy toward the war and of the consequences of a German victory involve sooner or later a consideration of the extent of economic power which Germany would be able to wield in international trade under such circumstances. Without attempting to predict the outcome of the war, Miss Lewis seeks to examine, on the basis of the trade figures of 1929 and 1937, just what *would* be the German position *if* the Nazis were to win. The study consists of an examination of the degree of dependence of the Nazi-dominated area upon outside sources for basic consumptive requirements and the extent of control which it might be expected to exercise in international trade because of its position with regard to exports. The author concludes that the Nazi area would have to continue to import large quantities of food and raw materials, that there would continue to be a substantial gap between

the required imports and the possible exports, and that there would probably be a shrinkage of income from services from which might result a real weakening of the economic power of the Nazis over world trade as a whole. In reaching these conclusions, Miss Lewis deliberately does not attempt to estimate the effects of either the war itself or the post-war reconstruction period upon the Nazi productive system; nor does she take into consideration the possible effects upon import requirements of changes in the standard of living. The author has very carefully circumscribed the scope of her study, and it is important therefore that no unwarranted deductions be drawn from her conclusions. Thus, while she concludes in effect that the gap between imports and exports would make it difficult for Nazi Europe to dominate world trade, a realistic view of the probable total international situation under such circumstances should not encourage great hopes of exercising effective control over the Nazis by means of trade. Should the Nazis dominate western Europe, it may be presumed that the Nazi war machine and party hierarchy will still be intact. That would mean that arbitrary control over living standards would be complete and Germany's bargaining position strengthened by limiting imports. It would mean further that unless there took place a general unification of the rest of the world for purposes of bargaining with the Nazis, individual countries would be confronted with all the elements of the totalitarian "trading" tactics recently experienced by the Balkan states. While in the long run the trade position of a Nazified western Europe might be none too independent, the short run realities might be sufficiently disagreeable to make the long run of merely academic interest!—WALTER H. C. LAVES.

Frederick L. Schuman, whose predictions in 1937 of approaching events in the realm of world politics were fully realized, today refuses to predict the outcome of the present war. Instead, in the third edition of his *International Politics* (McGraw-Hill Book Co., pp. 733, \$4.00), he states simply that "victory will go to those with most courage, endurance, and imagination." The author takes it for granted that "one or the other of the contestants for hegemony will unify the world before it has grown much older." If the victors or their followers fail to do so, we may look forward to the third world war of the century. Urging a redoubling of energy in the democratic states so that they will not be vanquished by default, the author warns that no revival of the League of Nations is likely to prove workable as a basis of order. Instead, he strongly supports Clarence Streit's proposals for a federal union, beginning with the United States and the British Commonwealth of Nations, with a common currency, a common commercial régime, and a common force for defense. National sovereignty, a primary evil in this day of finance capitalism, can be abolished in no other way. The sixteen chapters of the second edition of this book have

been reduced to thirteen, while the text is shorter by some fifty pages. Much of the material from Book III ("International Anarchy") has been rearranged and condensed; some of the chapters have been almost entirely rewritten. But the main feature of this section is a new chapter entitled "The Retreat of the Vanquished," whose one hundred pages bring up to date the rapidly shifting diplomatic and military aspects of the war. Books I, II, and IV have also undergone the revision required by the course of present-day events. This edition retains all the fire, interest, and food for thought of its predecessor. It is indispensable to teachers of international affairs, although Schuman warns that its value as a guide to the future will persist "only if the legions of Fascist totalitarianism are vanquished."—VERNON A. O'ROURKE.

In 1936, Hans Heymann came to America from Germany, where his distinguished career of scholarship had been interrupted by the extremes of Hitlerism. From his knowledge of Old World conditions, and his enthusiasm for a genuine New Order throughout the world at large, arises the *Plan for Permanent Peace* (Harper and Brothers, pp. xx, 315, \$3.50). The emphasis is placed upon a reconstruction of our economic world order so as to control one of the primary causes of war, but with full realization of the importance of political and cultural influences. A Bank of Nations, with regional auxiliary institutions, should (1) issue an international medium of exchange, (2) extend short-term credits to trade, and (3) create promissory notes for long-term investment purposes. "Fourteen ideals of a living peace" are enumerated (pp. 85-87), to be effectuated by a practical mechanism instead of relying upon the good intentions or good faith of peoples and governments. Not the elimination of free competition, but coöperative action according to a plan in which all nations must be included, is the solution offered. In addition to the basic economic organism to be built, there should be a reorganized international labor office and an international planning board for social balance and a federal world authority of a political nature. Dr. Heymann believes that "if an efficient organization adequate to our human wants can be visualized, our better impulses will assert themselves and strive for the attainment of such a superior organization" (p. 233). In support of his confidence, he quotes passages from recent statements of Neville Chamberlain, C. R. Atlee, Harold J. Laski, Richard T. Ely, the Commission to Study the Organization of Peace, and Pope Pius XIII (pp. 237-257). Although many may doubt the workability of his plan, none can challenge the author's sincerity and zeal in urging that "this higher world order is no dream, no utopia, but a relatively simple and logical aim." All interested in the promotion of world peace through some form of international federation will welcome Julia E. Johnson's *International Federation of Democracies* (The Reference

Shelf, Vol. 14, No. 8, H. W. Wilson Co., pp. 262, \$1.25), a compilation of concepts expressed by over fifty individuals and organizations during the past decade. The volume is primarily a debaters' manual, with the customary summarization of arguments on pages 221-237 and a convenient bibliography embracing twenty-five pages.—WILSON LEON GODSHALL.

The thesis of Secretary Hull that international anarchy is the product of disrespect for international law is converted into its antithesis by Jackson H. Ralston in his *A Quest for International Order* (John Byrne and Co., pp. 205, \$2.00). To him, the blame for international disorder lies largely in international law as conventionally understood. Mr. Ralston's reputation in the practice and scholarship of judicial settlement makes the more startling his contention that even this field is largely vitiated by the intrusion of international law. He criticizes it on the ground that, unlike municipal law, it does not harmonize with the equity once called the law of nature, but rather confuses right with event or custom. Mr. Ralston spares the natural-law school no less than the positivists, however, in deploring the fact that the unit of international law has invariably been the state rather than the individual and his welfare. These defects of international law are related by him to its toleration, not only of the doctrine of absolute sovereignty, but also of the sinful deeds of the sovereign state—war, intervention, and trade barriers. Were order and justice among individuals its only criteria, international law would, according to Mr. Ralston, point the way to a world federation featured by an international parliament and court, a subordination of national sovereignty to the general welfare, and an avoidance of all coercion except economic sanctions. That this would be a consummation devoutly to be wished one might well concede. But to put any blame for the delay of the millennium upon international law seems equivalent to blaming a photograph, or those believing a modicum of virtue to be better than none.—ALBERT K. WEINBERG.

Every discussion of the Sino-Japanese conflict inevitably reaches the question, "How can Japanese economy stand the strain of the war?" In *Japan's Economy Under War Strain* (Chinese Council for Economic Research, pp. 68), steps toward an answer are taken by trying to show what has happened thus far. Using figures and data from Japanese sources for the most part, or from estimates based upon Japanese studies, the compilers of this publication have brought together some very interesting information. While complete accuracy is not possible, the study seems to err on the conservative side. Four chapters on "The General Picture of the War Burden," "Financial and Monetary Aspects," "Supply of Goods," and "Labor and the War" are self-explanatory and merely strengthen widespread opinion as to the growing economic strain in Japan. Figures in

the chapter on labor which point out the increasing use of child labor in place of adults, and a striking growth in accidents due to longer working hours, are particularly significant. In the sections indicating the extent of American aid to Japan, the compilers have shown commendable restraint in not laboring the point, but in merely giving the figures and letting the reader's conscience do the rest. After reading the study, one cannot help conceding the validity of the compilers statement: "In any event, the Japanese people are yet to see the worst."—ANDREW E. NUQUIST.

*The Treaty of Washington, 1871* (Cornell University Press, pp. xiii, 134), by Goldwin Smith, is a study in the imperial relations between Canada and Great Britain. It deals only incidentally with the British-American facets of the famous treaty of 1871, but gives a full and interesting account of the long struggle within the British delegation between Canadian Premier Sir John A. Macdonald and his British colleagues. The storm in Canada over ratification is told equally well. The volume amply demonstrates that in its very infancy the Dominion of Canada laid the basis for its present independence in foreign affairs. The volume is a well documented addition to Canadian-Imperial history.—D. F. FLEMING.

What Stuart Chase has done for the popularization of economics is done for the popularization of the political science of Latin America by Hubert Herring in his *Good Neighbors* (Yale University Press, pp. 260). The author has buried deep facts in a lyrical, literary style which does as much to transmit the spirit of his subject as cold, hard statistics would ever have done. The statistics are there, to be sure, but they are not painfully there the way college professors generally prefer them. This is not a text-book. It is much more the "best seller" type. To those who have been over and over the ground of Latin-American relations, it does not offer much that is new except a different integration and many interesting personal accents. But those who are meeting Latin America for the first time could not find a more felicitous introduction. A word of praise needs to be said for the unusual pen and ink maps which underpin the over-all picture so well. Since cultural relations is Mr. Herring's special province, it is not surprising that he should have sustained his fine reputation in this field.—FRANCES REINHOLD FUSSELL.

#### POLITICAL THEORY AND MISCELLANEOUS

Seba Eldridge's *New Social Horizons* (D. Appleton-Century Co., pp. x, 444, \$4.00) and Robert E. Riegel and others' *An Introduction to the Social Sciences* (D. Appleton-Century Co., pp. xxvi, 554, xxviii in Vol. I, and xxvi, 555-1110, xxviii in Vol. II, \$6.50) apply cross-fertilization to the social sciences so as to achieve a more nearly adequate understanding of and control over social phenomena. Professor Eldridge demonstrates the catholicity of his sociology by utilizing materials ordinarily preëempted by



economists, psychologists, and political scientists. On his new social horizons appears a modern Utopia, after analyses reveal undesirable features in the present distribution of purchasing power, in the organization of production and disorganization of consumers, and in our political institutions. He sees the need for "a much larger measure of collective responsibility and control" and warns against "relegation of the state to a subordinate place in the social order, just at the time growing economic interdependence was accentuating needs no other institution could serve." He emphasizes the individual citizen's responsibility for developing political democracy, since "popular government means *lay control* in public affairs." "We must learn how to socialize economic enterprise, build a responsible state, foster competent laymanship, create a creative people." That the new social horizons are not mirages is evidenced by carefully documented facts concerning collectivist developments in twelve major fields in the United States. Quantitatively greater, but more elementary, is the two-volume "Introduction" by Professor Riegel and seven colleagues of the Dartmouth faculty. Since the course in which these volumes developed was primarily for sophomores who did not plan to major in the social sciences, its description of current social institutions and their problems includes various phases of economic activity, of the family, population, and race, of crime, and finally of government and politics in a democracy. Selecting and arranging materials, not easy in one division of one social science, become increasingly difficult when all the social sciences are "integrated." Government control of business is the subject in Part IV, while government itself is not studied until Part XIII of the fourteen parts into which the two volumes are divided. The explanation offered is that "democratic government is the meeting place of the tremendous variety of forces which constitute modern society and consequently can be understood only as those forces are understood." While recognizing the departmental prejudices which the organization of such a course encounters and the difficulties of fitting together the pieces of the puzzle supplied by the collaborators, the reviewer believes that too much material of interest only to specialists has been included and that consequently there has been too little of the integration which should make the book appeal to non-specialists.—HOWARD WHITE.

James Burnham's *The Managerial Revolution* (John Day, pp. 285, \$2.50) endeavors to show that we are moving rapidly in the direction of a political order dominated by what he calls "the managers." Capitalists, who have hitherto controlled both the economic and political spheres, have been on the way out for some time; and whether they know it or not, the "managers," in whom power over production is being increasingly vested, are, by that token, seizing control of the state. With this control will go the privileges of any ruling class, including manipulation of in-

comes in favor of the rulers. That democratic socialism is imminent finds no support whatever in contemporary evidence; and the same statement can be made regarding the contention that "capitalist democracy" will survive. "The managers" see the fallacies of traditional shibboleths (as in Germany and the Soviet Union), cut through the red tape of parliamentarianism and capitalist dogma, abolish unemployment, and give the masses a sense of security for which they have been groping, but which the capitalist-parliamentary state was unable to provide. To this reviewer, Burnham's thesis can be criticized on three grounds: (1) the uncritical acceptance of the dogma that those who "control production"—whatever that may mean—*ipso facto* control the state; (2) ambiguity in defining "the managers"; and (3) absence of sufficient clarity and detail in marshalling evidence supporting the thesis.—MULFORD Q. SIBLEY.

In his *Not by Arms Alone* (Harvard University Press, pp. 161, \$4.00), Professor Hans Kohn has collected six published essays on the current scene and its background. "The Totalitarian Philosophy" is an excellent exposition of the fascist exaltation of war as the permanent business of life. "The Problem of Central Europe" portrays Austria as the creator of a better German civilization, one modified by the other Hapsburg peoples, which should have evolved into a true federal union. Instead, Seipel, Dollfuss, and Schuschnigg aimed to forestall total fascism with a mild, clerical brand and were submerged. The section on "Czech Democracy" develops the rôle of the Czech historian Palacký in building a democratic tradition on John Huss, one which was to survive by superior moral and intellectual achievements, and which distinctly impressed Europe as well as the Czech people. Consequently, in suppressing the Czechs the Germans deliberately dealt "a decisive blow to world democracy." In later chapters, Kohn brings out the fears of the wealthy classes as the key to appeasement and warns that a "democratic revolution" will be necessary to defeat the world revolution of the fascists. He appeals for a vigorous and simplified education which will stress positive democracy, and democratic federation, as the antidotes for the brutal and regressive unifications of fascism.—D. F. FLEMING.

*The Political Life of the American Medical Association* (Harvard University Press, pp. 182), by Oliver Garceau, is devoted to the thesis that the internal processes of voluntary associations interested in public policy deserve a more careful examination than has customarily been made in studies of pressure groups and pressure politics. Obviously, a better subject than the American Medical Association for the scrutiny of "internal group government" would be hard to find. Of special interest to students of politics are the ingenious efforts of the author to discover the *locus* of power in the A. M. A. and his account of the techniques used by an "ac-

tive minority" to suppress dissent within the profession in order to maintain a specious unanimity in the face of public criticism. The materials turned up are so illuminating at a number of points that it is to be hoped that this study will be followed by others of a like character. In view of the judicious treatment of the evidence throughout the volume, the author's strictures on the policy of the A. M. A. are very damaging, although the reader may question his conclusion that the remedy for the evils of indifference and oligarchy is the organization of parties within the membership.—E. E. SCHATTSCHNEIDER.

In *The Way Out* (International Publishers, pp. 255, \$1.75), Earl Browder has brought together a group of his speeches, reports, and articles in an endeavor to show the Communist position in the contemporary world. Part I., "The Road to Peace," analyzes the American Communist position with reference to the war. Part II., "The Most Peculiar Election," deals largely with the issues of the 1940 election. In it Browder examines Republican, Democratic, and Socialist positions and finds them essentially alike. He unequivocally asserts that "Willkie was chosen for the Republican party by Roosevelt and Lamont after an agreement had been reached as to fundamental policy to which all would adhere . . ." (p. 89). Part III., "The Way Out of the Imperialist War," is a general discussion of foreign policy from the Communist point of view. Only "proletarian internationalism," Mr. Browder asserts, will constitute a solution to the problems of international relations; and he identifies this ideal with certain tendencies implicit in "the American tradition." This book will not add to Mr. Browder's reputation as a political thinker.—MULFORD Q. SIBLEY.

*Public Administration Libraries*, by a committee of the Social Science Group of the Special Libraries Association (Public Administration Service, pp. 77, \$1.50) is, as its subtitle indicates, "a manual of practice." the several types of public administration libraries are described, together with their purposes and principal problems. The librarian is told how to select, acquire, classify, catalog, shelve, preserve, loan, "weed out," and replace his materials; how to select, compensate, and keep up the morale of his staff; how to plan and supervise the work of his agency; how to prepare and administer his budget; and is given a list of basic sources of information, the names and addresses of publishers of essential materials, and of the manufacturers of library equipment. The authors are librarians whose competence is unquestioned, and the value of much of the information presented is obvious. It is not very enlightening, however, to be told that a public administration library should have a typewriter with universal keyboard and library characters, that sloping dictionary stands are preferable to flat ones, and that cheap filing cases are not economical.—ROGER V. SHUMATE.

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

CLYDE F. SNIDER

*University of Illinois*

### AMERICAN GOVERNMENT AND PUBLIC LAW

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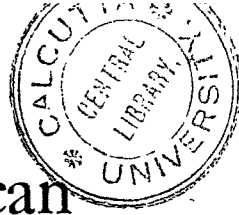
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## THE PROMULGATION OF LAW

GILBERT BAILEY

*Indiana University*

"The impression of an inward principle," asserted Thomas Aquinas, "is to natural things what the promulgation of law is to men; because law, by being promulgated, impresses on man a directive principle of human actions."<sup>1</sup> Promulgation is of the very essence of law, and a *sine qua non* of legal obligation.<sup>2</sup> This is true both logically and historically.

The very idea of obedience presupposes knowledge of that which is to be obeyed, without which knowledge there could be only the coincidence, never the obligation, of obedience. If human relationships are to be calculable, the people of a community must know, and know in advance, the rules by which they are to act and by which they may expect other men to act. Here is a proposition of such obvious force that any conception of legal obligation is almost bound to deal with it as an ethical obstruction to law enforcement which must be obviated by promulgation and a supplemental overall presumption that "everyone knows the law." And this injunction that "the law must be made known," in theory if not in fact, is also a commonplace moral stipulation so compelling that in

<sup>1</sup> Aquinas, *Summa Theologica*, Vol. VIII, 36.

<sup>2</sup> "A bare resolution confined in the breast of the legislator, without manifesting itself by some external sign, can never properly be called a law. It is requisite that this resolution shall be notified to the people who are expected to obey it." Blackstone, 'Introduction,' *Commentaries*, Sec. II, 44. "Wherefore, in order that a law obtain the binding force which is proper to a law it must needs be applied to the men who have to be ruled by it. Such application is made by its being notified to them by promulgation. Wherefore promulgation is necessary for the law to obtain its force." Aquinas, *op. cit.*, 7-8. "A law is not really law until it has been made known." Gratian, *Decretum Gratiani*, c. 3, dist. VII. "In order for a law to exert its force, knowledge of the legislator, and of the law as well, is required on the part of one for whom the law is passed." Pufendorf, *Elementorum Jurisprudentiae Universalis Libri Duo* (trans. by W. A. Oldfather), Vol. II, 154-155.

solemn lip-service to it modern jurisprudence perpetuates a presumption which, logically, divests the vendors of legal knowledge of their chief office, deprives the judiciary of its interpretative function, and makes something worse than false prophets of judges who are reversed by courts of final appeal.<sup>3</sup>

The practice of promulgating law by the public exhibition of codes was almost universal among ancient legal systems.<sup>4</sup> And, although in natural law theories the obligation of obedience was characteristically moral rather than legal, the idea and the language of promulgation were in medieval thought adopted from the ancients and put into descriptions of natural law and custom. In addition to actual publication, the law was variously promulgated by God or reason, by custom or tradition, and by the mere fact that people through their representatives were constructively present in the body which affirmed or found the law, the appropri-

<sup>3</sup> See Frederick G. McKean, in *St. Louis Law Review*, 96-107. The author argues that: (1) the maxim, *Ignorantia legis neminem excusat*, should not be compounded in a syllogism with the presumption of legal knowledge; (2) the maxim does not require the presumption of legal omniscience to support it; (3) it could be amply justified in terms of pure expediency; (4) it has been abridged and discarded so many times as to be unworkable. See also 32 *Harvard Law Review*, 283-285. Here the maxim of inexcusable ignorance is itself condemned as a "decrepit doctrine unsupported on principle and unjust in operation," which should be abolished by legislative act "establishing mistake of law on an equal footing with mistake of fact."

<sup>4</sup> Wigmore supplies a noteworthy exception, namely, the Japanese code of 1790, the rubric at the end of which prescribes that it is "not to be seen by any but officials concerned." *Panorama of the World's Legal Systems*, Vol. II, 483-484. "In general, the laws and legal decisions were not publicly promulgated; they were circulated in manuscript for the use of officials only . . . and were not addressed to the people." *Ibid.* Wigmore's explanation of this apparent *contradictio ad absurdum* is in terms of a then prevailing conception of justice, the belief in a "rule of men" rather than a "rule of law." Laws, he says, were commands addressed to the rulers, which did not need to be generally circulated. After the "Burning of the Books" (Code of Chow, 212 B.C.), the ruler decreed: "Whoever wants to know the laws may go to the magistrate and learn of them." Wigmore, *op. cit.*, Vol. I, 158. Plato does not touch upon the problem of promulgation as it relates to the "rule of men," because there is no place in the ideal state for an average rule, for equitable treatment of like cases, or for crystallized intelligence. Plato's codes are introduced with the restoration of law in his second-best state of the *Statesman* and the *Laws* when the divinely-mad philosopher king and his art are consigned to an imaginary guardianship and room is made for habit, for convention, and for law. In ancient Chinese philosophy, the much quoted saying of Confucius, "Let the people abide by the law, but let them not be instructed in it," is to be explained in these terms. Confucius believed that the only true government was one which relied on the unbridled virtue of the men in power. "I can try a suit as well as other men," he says, "but surely the great thing is to bring it about that there will be no going to law." See *Analects*, bk. XII.

ate method depending in each case upon the choice of competing assumptions as to the nature of law.

Medieval philosophy prided itself on its inclusiveness; indeed the system of Aquinas is a kind of theological apology for all observed facts. So it is not surprising that the ideas of promulgation instanced above comprise the entire list of formal theories, with only one significant exception, namely, the point of view stated by the eighteenth-century reformer, Jeremy Bentham, which does not assume the propriety of the existing order, but argues for radical reform. Since each of the theories carries with it the presumption of legal knowledge consequent upon promulgation, the five methods of promulgation mentioned above may each be cast in terms of a distinct legal presumption:

(1) Promulgation by God and Reason

Law is nothing more than a body of preëxisting moral principles which everyone may be presumed to know, since God promulgates them by engraving them on the hearts of men.

(2) Promulgation by Custom

Everyone is presumed to know the customary laws, because customs derive their peculiar sanction from the unanimity of assenting opinion, which implies previous knowledge of the law.

(3) Promulgation by Publication

Everyone is presumed to know everything he might know by reading the law, and everyone is exposed to the possibility of acquainting himself with the law through the posting of statutes in conspicuous places and other forms of publication.

(4) The Fiction of Constructive Presence

Everyone is presumed to know the law because he is constructively present through his representatives in the legislature which finds or makes the law, and is, in judgment of law, party to each measure passed.

(5) Promulgation Consequent on Reform

In so far as it fails to accord with fact, the presumption of legal knowledge symbolizes the tyranny of law. In modern jurisprudence, promulgation necessarily implies not only codification and publication of laws, but a new jurisprudence, built upon a common philosophical base for all laws, a "reason" pervasive enough to direct the rationale of every legal rule to a single center.

I

As early as the twelfth century, "excusable ignorance" was asserted as a moral maxim by Gratian, who declared that "ignorance of the civil law may be condoned, but ignorance of the natural

law is always to be condemned in those of mature years."<sup>5</sup> The distinction between the two kinds of law is, of course, based on the identity of the latter with human reason and the consequent presumption of legal knowledge which such self-apparent identity permits.

In fact, each kind of promulgation instanced above turns upon the assumption as to the nature of law and the applicable presumption in each case. If, as Aquinas asserts, "the natural law is promulgated by the very fact that God instilled it into man's mind so as to be known to him naturally,"<sup>6</sup> such a law may be presumed to be known without a human promulgation and without violence to the facts. If "God is its promulgator" as well as "the author and enforcing judge,"<sup>7</sup> every intelligent being may be presumed to know it, and as Burlamaqui affirms, the obligation to obey it might well be absolute under any legal system:

"... there is no need to ask whether God has sufficiently notified his laws to man. It is evident that we can discover all their principles and deduce from them our several duties by that natural light to which no man ever has been refused. It is in this sense that we understand what is commonly said, that the law is naturally known to all mankind... everything being rightly considered, the law of nature is sufficiently notified to empower us to affirm that no man at the age of discretion and in his right senses can allege as a just excuse an invincible ignorance of this article."<sup>8</sup>

One of the intrinsic attributes of law in the Stoic definition which made it morally binding and, in fact, natural, was its identity with "this reason [which] is law when firmly fixed and developed in the human mind."<sup>9</sup> In spite of the complexities which are introduced into the promulgation of natural law by its association with the Mosaic Tablets and other systems of law too holy to be generally intelligible, the conception of a law of nature "written on men's hearts," a law "distinct from what St. Paul recognized as

<sup>5</sup> Carlyle, *Medieval Political Theory in the West*, Vol. II, 106.

<sup>6</sup> Aquinas, *op. cit.*, 8. See also Pufendorf, *op. cit.*

<sup>7</sup> Cicero, *De Republica* (translated by C. W. Keys), bk. III, ch. XXII, 211.

<sup>8</sup> *Principles of Natural and Political Law* (trans. by Nugent), 126-129.

<sup>9</sup> Cicero, *De Legibus*, bk. I, ch. VI, 317-321. Certain engaging complexities are introduced into the promulgation of natural law by its identification or association with a law too holy to be generally intelligible. See Aquinas, *op. cit.*, 9, 10, 29-31, and St. Germain, *Doctor and Student*, Chap. I, 4. According to Francisco Suárez, natural law is promulgated in a twofold way. "First, by natural reason; secondly, by the law of the Decalogue written on Mosaic Tablets." *De Legibus Ac Deo Legislatore* (quoted from J. B. Scott, 22 *Georgia Law Jour.*, 405, in Jerome Hall's *Readings in Jurisprudence*).



the revealed will of God,"<sup>10</sup> passed into medieval thought as a Christian political notion, implanted itself in a main stream of legal theory, and is still serviceable in tempering the urgency of actual publication, codification, or other legal reform.

## II

If laws may be promulgated simply by engraving them on human hearts and be presumed to be known by reason and conscience, they may also be made known, as Plato suggests, by being "embalmed as national customs."<sup>11</sup> Possessing their own peculiar virtue of natural notoriety, customs may be presumed to be known by tradition and usage without being "written down on triangular tablets."<sup>12</sup> In the case of pure custom, that which derives its sanction from a community's spontaneous reaction against violators, there appears to be no need at all for actual publication, since the spontaneity of its appeal to obedience presupposes knowledge of, as well as assent to, that which is to be obeyed. In early medieval thought, when law was uniformly conceived as preëxisting in the form of immemorial customs, Aristotle's anarchistic assertion that time alone "can give law the power to command obedience"<sup>13</sup> was expressed in even more clear-cut terms. Not only was custom often regarded as binding merely because it was ancient; it was also held that no law, whoever promulgated it, had any real authority or validity until it was ratified by common usage.<sup>14</sup>

Thus an alternative attribute of medieval law which made it naturally known was its "promulgation by custom," which, according to James Wilson, who perpetuated medieval notions of law in American legal theory, "is a silent but real promulgation," and the happiest way of governing mankind, because it gives the strongest kind of evidence that common consent is implied.<sup>15</sup> This custom-content is a quality of law so essential to modern

<sup>10</sup> St. Ambrose, St. Hilary of Poitiers, St. Augustine, and others of the church fathers acknowledge the existence of a self-promulgating law of nature, distinct from what St. Paul recognized as the revealed will of God, "a law written on men's hearts, recognized by men's reason." Carlyle, *op. cit.*, Vol. I, 83, 104-106.

<sup>11</sup> *Politicus*, Dialogues of Plato (Jowett), Vol. III, 584.

<sup>12</sup> *Ibid.* <sup>13</sup> *Politics* (Jowett), Vol. I, 100.

<sup>14</sup> Carlyle, *op. cit.*, Vol. II, 62-63, 155-156. See Aquinas, *op. cit.*, 80-81.

<sup>15</sup> James Wilson, *Works*, Vol. I, 57. See also McIlwain's *Constitutionalism and the Changing World*, 145.

jurisprudential rationalization that no imperative theory of law can be accepted for all purposes. Assuming as it does the pre-existence of law behind the judge and the ultimate propriety of the existing legal system, the common sense identity of imperative law and self-promulgating custom is still being formally enlisted in support of the presumption of legal knowledge<sup>16</sup> and effectively cited in opposition to codification<sup>17</sup> and other legal reform which aims directly at the promulgation of legal rules.

### III

The tendency of modern legal theory to define law in terms of will-content and the sheer bulk of modern legal systems each introduces a new difficulty into the problem of promulgation. When law is expressed in terms of will, an actual publication is required to make it known, for people can discover for themselves and follow only that which really preëxists in the form of reason or custom.<sup>18</sup> Then again, when the volume of law becomes so immense that the mass of people cannot even recognize or identify legal situations as they are confronted with them, or determine even by reading or consulting a lawyer what the rule of law is in a particular case, the principle of promulgation poses a dilemma for which Blackstone's maxim, everyone is presumed to know what he might know, is but a formal apology for the unknowable character and size of a law that cannot be promulgated.<sup>19</sup>

Although it is thus the will-content of law which makes human promulgation necessary and natural notoriety which makes mundane advertisement less urgent, the history of promulgation

<sup>16</sup> "Human customs everywhere fit themselves into the law. As a rule, whoever follows these customs may be sure of not offending the law. Only in this way can the ordinary man, to whom all the rules are not accessible in practice, escape the disagreeable consequences of the law." Leonard, "The Vocation of America for the Science of Roman Law," 26 *Harvard Law Rev.*, 289-407.

<sup>17</sup> See p. 1077 and n. 82.

<sup>18</sup> This kind of reasoning is implicit in the teachings of Marsiglio of Padua, one of the first men to point out that laws are not discovered in the sky but made in legislative assemblies. Perhaps Marsiglio's argument that law is not valid until promulgated is suggestive at this point. The principle is acknowledged in the law of Scotland by limiting the presumption of legal knowledge to laws which have been published. Erskine, *Principles of the Law of Scotland*, Chap. I, 1-6. See *A Defense of Liberty Against Tyrants* (edited by Laski), 150: "... after the law is once enacted and published, there is no more dispute about it; all men owe obedience to it, and the prince in the first place to teach other men their duty. . . ."

<sup>19</sup> Blackstone, *op. cit.*, bk. I, ch. II, 185.

does not fit snugly into a set of syllogisms. The coëxistence of competing assumptions as to the nature of law, together with the fact that social wisdom may suggest a course of action which does not accord with the prevailing philosophy of law, has compounded the ideas and practices of promulgation. Actual publication may, for example, give general publicity to rules which have been privately promulgated to persons in authority or exclusively known to select groups. Some of the most primitive codes were thus elaborate promulgations of simple rules, benevolently intended to give permanent publicity to the laws which gods had privately communicated to the kings.<sup>20</sup> The value of the Twelve Tables of Rome and of other ancient codes in Greece and Italy consisted, says Maine, in the publicity which they gave to customary laws, knowledge of which had been unscrupulously monopolized by an aristocratic oligarchy.<sup>21</sup> In Christian thought, the ancient practice of engraving laws upon tablets and "publishing them" to the people had a kind of divine counterpart in the Mosaic Tablets, which are sometimes regarded as re-promulgations of the natural law that had been lost at the fall of man.<sup>22</sup>

In some instances, promulgation was intended to give authority to rules of law. It was a maxim of Roman civil law that whatever rules were promulgated by the prince had the force of law; contrariwise, that the emperor's edicts were not binding until promulgated.<sup>23</sup> The promulgation of positive law which Aquinas proposed as one of the four essential attributes of a true law served, however, to publicize as well as to authenticate.<sup>24</sup> By such a pronouncement,

<sup>20</sup> Most of the ancient codes were exhibited publicly by inscribing them upon scrolls or tablets. For accounts of the various methods of promulgation, see Wigmore, *Panorama of the World's Legal Systems*; Kocourek and Wigmore, *Sources of Ancient and Primitive Law*, Part III; Diamond, *Primitive Law*, Chaps. IV-X.

<sup>21</sup> Maine, *Ancient Law*, 13. In primitive Iceland about 1000 A.D., the solitary official of the republic was called the *Lögsögumator*, which meant speaker or declarer of the law. It was his duty to recite aloud, in the hearing of the greater number present at the Ting the whole law of Iceland. He was bound to answer everyone who asked him what the provisions of the law actually were. Bryce, *Studies in History and Jurisprudence*, 275. A more refined sort of declaratory promulgation was practiced in early Roman law. The emperors, by the use of a 'judicial rescript,' would reply to a request for instruction of law on a particular case, an early antecedent of the declaratory judgment. Wigmore, *op. cit.*, Vol. I, 188.

<sup>22</sup> Carlyle, *op. cit.*, Vol. I, 104-105; Vol. II, 111. See Aquinas, *op. cit.*, 51-52.

<sup>23</sup> *Ibid.*, Vol. III, 41, 46; Blackstone, *op. cit.*, Intro., Sec. II, 45.

<sup>24</sup> See Webster's Dictionary for distinction between promulgation and publication.

the law of nature was thereby particularized, made more definite, and impressed upon man.<sup>25</sup> And by the same pronouncement a color of authority was given to positive law, which, although it emanated from the universally valid law of nature at the top of the cosmic legal hierarchy, had to be promulgated by authority of the public personage to whose care the welfare of the community was entrusted.<sup>26</sup>

Sometimes, however, three purposive ideas, participation (or ownership), publicity, and authority, were compounded in the medieval mode of promulgation. The publication of customary laws actually was designed to give publicity to customs already binding on man, while at the same time acknowledging the authority and the participation of the king, the wise men, or the people.<sup>27</sup> After the prevailing practice had been ascertained by those who knew, not only was the result promulgated in the sense that it was reduced to writing and put into force by authority of the king and those who had to observe it, but the "discovery" was also set forth in the form of a statute or assize, in order that there might be no further doubt about it.<sup>28</sup> "The law was primarily custom; legislative acts were not expressions of will, but records or promulgations of that which was already binding upon men."<sup>29</sup>

The idea of promulgation was conditioned again by the civil law maxim that assent of all those concerned, *omnium utentium*, was necessary to give legal force to a measure.<sup>30</sup> Although one method of satisfying that injunction consisted merely in the attachment of enacting clauses which declared that the statute was passed with the advice and consent of all those concerned,<sup>31</sup> more substantial measures were taken by the church, "which long has exalted the principle of promulgation,"<sup>32</sup> and by the English

<sup>25</sup> Aquinas, *op. cit.*, 36-57. See also *Vindiciae contra Tyrannos* (ed. by Laski), 144. <sup>26</sup> *Ibid.*, 7-8.

<sup>27</sup> Carlyle, *op. cit.*, Vol. II, 46-47. See also McIlwain, *op. cit.*, 154-160.

<sup>28</sup> See Sabine, *History of Political Theory*, 203-204.

<sup>29</sup> Carlyle, *op. cit.*, Vol. III, 41. As Fortescue says, the laws of England are natural, customary, or statute: "the two former, when they are reduced to writing, and made public by a sufficient authority of the prince, and commanded to be observed, they then pass into the nature of statutes." Fortescue, *De Laudibus Legum Angliae*, ch. XV. (Quoted in John Dickinson's *Administrative Justice and the Supremacy of Law*, 86-87).

<sup>30</sup> McIlwain, *op. cit.*, 145, 147; Carlyle, *op. cit.*, Vol. VI, 136-140.

<sup>31</sup> Sabine, *op. cit.*, 204-205; Carlyle, *op. cit.*, Vol. I, 236-237.

<sup>32</sup> A. Van Hove, "Promulgation in Canon Law," *Catholic Encyclopedia*.

Parliament. It was not until the fifteenth century that the church abandoned provincial promulgation by traveling bishops and special envoys and resorted to a formal posting of papal edicts at Rome only.<sup>33</sup> In fourteenth-century England, the provincial publication of statutes which proclaimed and affirmed Magna Carta and other immemorial customs of the realm is said to have been one of the chief functions of Parliament, some doubt existing as to the validity of these declaratory statutes unless they were published in town and borough.<sup>34</sup> When the composition of Parliament settled down and ideas of representation began to take form, it was then possible to rationalize the practice of attaching justificatory preambles to statutes into a judicial fiction by which every Englishman was, in judgment of law, presumed to know the law because he was constructively present in Parliament through his representatives.<sup>35</sup> In spite of the fact, however, that after 1366 statutes were binding on mere enactment without publication,<sup>36</sup> they continued until the reign of Henry VII to be published and copies made conveniently available to the public.<sup>37</sup>

The pattern to which Blackstone assimilated the various medieval ideas of promulgation reflects the same circuitous treatment which marked his theory of law. First, he argues in characteristic medieval fashion that "human laws are only declaratory of" and subordinate to the immutable laws of nature which the Creator himself has enabled man to discover.<sup>38</sup> Although as a jurist he acknowledges the fiction of constructive presence to be a valid legal maxim,<sup>39</sup> there is no room in his theory of the nature of

<sup>33</sup> *Ibid.*      <sup>34</sup> McIlwain, *op. cit.*, 127-128, 146, 168, 158, 165.

<sup>35</sup> *Ibid.*, 146, 148.

<sup>36</sup> *Rex. v. the Bishop of Chichester*, 4 Pasch. 39 Edw. III, 7; Coke's *Institutes*, 26.

<sup>37</sup> See Blackstone, *op. cit.*, bk. I, ch. II, 135. Holdsworth does not share Blackstone's view that the continued publication of laws subsequent to the above case was "merely for the information of the whole land." He says that "though it was held in 1366 that such publication was not necessary to their validity . . . publication was very necessary, for, as we have seen, knowledge of the law was essential to all those who had property to protect. . . . The forms of the law and physical violence had come to be alternate instruments to be used as seemed most expedient. This was the reason why knowledge of the laws was so widely diffused at this time." *History of English Law*, Vol. II, 436.

<sup>38</sup> Blackstone, *op. cit.*, Intro., Sec. II, 46.

<sup>39</sup> *Ibid.*, bk. I, ch. II, 185. The point in the common law where this idea of representation dwindles to a bare presumption has not been determined, and, as Bentham indignantly affirms, it is hardly worth the trouble to ascertain. Jurists of such stature as Fortescue, St. Germain, and Coke, although they face the fact that

municipal law for such a harsh syllogism. When he comes to define positive law, he concludes that as a minimum moral requirement every resolution must be "notified to the people who are expected to obey it," or it "can never be properly called a law," since every person must be afforded the possibility of determining for himself what the law is.<sup>40</sup> Finally, the notion of promulgation by custom he specifically equates to the common law. It is "promulgated by universal tradition and long practice (which presupposes a previous publication)."<sup>41</sup>

## IV

The only approach to the problem of promulgation which does not tacitly assume the propriety of the existing legal system is to be found, as might be expected, in the uncompromising thought of Jeremy Bentham. In reply to practical men who protested that the law could not be promulgated to the mass of men, Bentham turned the argument around: that was precisely the trouble with it. What was needed was a legal system which people could comprehend.

Promulgation is of special import in utilitarian jurisprudence. The artificial identification of interests which Bentham proposed to accomplish by legislation could not be achieved until the laws were made known to the people whose divergent interests were to be brought into harmony with the general interest of society.<sup>42</sup> And the general interest of society, which is the greatest happiness for the greatest number, ordains promulgation by "instruction" and prohibits promulgation by "suffering"; i.e., it will not permit punishment itself as the instrument for making the law known.<sup>43</sup>

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knowledge of law is an unremitting condition of obedience to law, espouse no theory or fiction of representation to justify the presumption of legal knowledge. According to St. Germain, law gets its name from the manner in which it is promulgated; human law, therefore, must have a human promulgation by the prince. Fortescue, whom Coke is said to have followed on this point, expressly states that statutes, which are themselves only promulgations of natural law and custom, do not pass into the nature of statutes until they are made public by authority of the prince and commanded to be obeyed.

<sup>40</sup> *Ibid.*, Intro., Sec. II, 45-46. This is sufficient. "Once the law is notified or prescribed in the usual manner, it is then the subject's business to be thoroughly acquainted with it, for if ignorance of what he might know were admitted as a legitimate excuse, the law would be of little effect but might always be eluded with impunity." *Ibid.*, 46. <sup>41</sup> *Ibid.*, Intro., Sec. II, 46.

<sup>42</sup> Halévy, *The Growth of Philosophical Radicalism*, 13, 17-18.

<sup>43</sup> Bentham, *op. cit.*, Vol. VI, 519-520.

Although a legislator may contrive a good law, it is equally imperative, Bentham says, that it be made known to the people who are to obey it. That calls for legal reform, a new jurisprudence:

"That which, for this purpose, we have need of (need we say it?) is a body of law, from the respective parts of which we may, each of us, by reading them or by hearing them read, learn, and on each occasion know, what are his 'rights' and what are his 'duties.' . . . As to these same 'duties,' we would endeavor to be punctual in the fulfillment of them, if we knew but what they were; but, to be punctual in the fulfillment of duties, the knowledge of which is kept concealed from us, is equally impossible."<sup>44</sup>

In the absence of a theory of presumptive notoriety—natural, customary, or fictitious—compatible with his own convictions, Bentham looked upon the prevailing system of English jurisprudence as a tyrannical leviathan of pure will—unknown and unknowable—which imposed an unjust, indeed an impossible, obligation of obedience.<sup>45</sup> "As well might it be out of a man's power to do an act as out of his knowledge that he is called upon to do it."<sup>46</sup> Like the ancient king and tyrant, Caligula, who wrote his laws in small script and posted them upon high pillars the better to ensnare the populace, so the "fee-fed lawyers" perpetuated a similar system of snares—the common law, which could never be obeyed because it could never be known, and could never be known for the simple reason that it could not be promulgated.<sup>47</sup> The lawyer's copartner, the legislator, was likened to "the most stupid of birds," which buries its egg in the sand, and to a military commander who mumbles his orders to himself and does nothing about them. He frames his laws, and then abandons their promulgation to chance, "thinking that his task is finished, when

<sup>44</sup> *Ibid.*, 546–547.

<sup>45</sup> Government by unwritten law Bentham called "government by laws which do not exist"; the idea of natural law he condemned as a mere metaphor; the fiction of constructive presence, whose authorship he incorrectly attributes to Coke, is dismissed as a "notable piece of astutia"; while the bare presumption of legal knowledge he regarded as symbolic of law's "unspeakable tyranny."

<sup>46</sup> *Op. cit.*, 519.

<sup>47</sup> "That a law may be obeyed, it is necessary that it should be known; that it may be known, it is necessary that it be promulgated . . . [but] to promulgate the English laws as they exist at present; to pile the decisions of the judges upon the top of the statutes of Parliament, would be chimerical; it would be to present the seas to those that thirst; it would do nothing for the mass of people who would be unable to comprehend them." *Ibid.*, Vol. I, 157. "It is not so much the science of law that produces litigation, as the ignorance of it." Cicero, *De Legibus* (Translated by Yonge), 406.

the most important part of his work has only begun."<sup>48</sup> The result of all this neglect is that the lessons of jurisprudence are taught *ex post facto* as a man promulgates his rules to a dog. He falls upon the dog and beats him. "The animal takes note in his mind of the circumstances in which he was beaten; and the intimation thus received becomes, in the mind of the dog, a rule of common law."<sup>49</sup> Such is the mystery—and the tyranny—of law:

"As with other parts of the law by which the fate of every man is disposed of, so it is with this [contract law]. They tell him he ought to know it; they say of him that he does know it; they give him no means of knowing it; they see he does not know it; they do nothing to make him know it; they do everything to keep him from knowing it; they have brought it into a state in which it is impossible for him to know it; they say it is; they insist that it is; they say his ignorance of it is no excuse; and, in all imaginary ways, they punish him for not knowing it."<sup>50</sup>

Bentham's theory of promulgation may be distinguished from mere token publications and from other codification proposals. First, it proposes comprehensive changes in the volume and character of law through codification. Secondly, it differs from other codification proposals, not only in zeal, skill, and lack of realism in approach, but also in defining an "objective" common base for all law and by tying law to a single philosophical principle. If it were possible to promulgate the law as Bentham sought to promulgate it, there would be little need for professional vendors of legal knowledge and almost no room for the interpretative function of the judiciary. Finally, it differs from other theories of natural notoriety by reversing the order of things in this way: that natural notoriety is envisaged as a result of, rather than a substitute for, publication and codification.

Other codes had been drafted and published and their promulgative value demonstrated, but they "accomplished the appearance" rather than the "reality" of promulgation. The real change had to come in the nature of law itself.<sup>51</sup> The essence of codification, which

<sup>48</sup> *Ibid.*, Vol. VI, 519. "In England the business of promulgation is a very simple affair. In the body of every act of Parliament, a day is specified in which it shall be considered as being in force. Nothing is done to circulate it by the King, or judges, or anybody else; but a copy is given to the King's printing office where it is printed in an obsolete obscure type, and inconvenient folio form, and sold, as may be expected under a monopoly, at a dear price; and there it lies for the use of anyone that has money to spare to buy it, and thinks that it is worth his while to do so. Every man is then supposed to know and to understand the law. . . ." *Ibid.*, Vol. IV, 312.

<sup>49</sup> *Ibid.*, Vol. VI, 519.

<sup>50</sup> *Ibid.*, Vol. IV, 481-482.

<sup>51</sup> *Ibid.*, 481.



was only a means to promulgation, consisted in finding a common base for all law, a universally valid principle pervasive enough to direct the rationale of every rule to a single center. Legal relations were too numerous to be remembered, but the "reason" which should underlie every rule of law was intelligible to every one when the law was tied to it in such a way that each rule recalled the philosophic home from which it came.<sup>52</sup> The objective principle of utility was, when the laws were securely anchored in the greatest happiness principle, and properly codified, the most effective instrument of promulgation. The detailed arrangement of parts then become only subordinate views of utility, addressing themselves not to memory but to "reason," which would serve as a "technical memory" when sheer memory failed.

Although Bentham claimed for his greatest happiness principle the attribute of universal validity, he did not pretend that it had also the virtue of native notoriety. It had to be taught, and the method of instruction which he proposed was the promulgation of laws as a great publicity enterprise, accompanied always by the promulgation of justificatory reasons in the form of philosophic preambles.<sup>53</sup> The exhibition of particular rules of law and the philosophic preambles in windows, post offices, shops, theatres, and by every institutional device of publicity would diffuse knowledge of the law in two different respects: the general principles of utilitarian jurisprudence might be taught inductively while particular rules of law were being mastered.<sup>54</sup> And to further lighten the task of memory, particular codes might be set before the classes of people to which they respectively referred in accordance with the four principles of "division and concernment."<sup>55</sup>

<sup>52</sup> *Ibid.*, 160-161. "To give a reason for a law, is to show that it is conformable to the principle of utility." *Ibid.*, Vol. I, 163.

<sup>53</sup> Seemingly, Plato presupposes that the laws will be generally known. The aim of the philosophic preamble in the *Laws* is to persuade the citizens to accept the commands by demonstrating "that they are the logical result of principles in which they believe. . . . His advocacy of the preambles shows the strong feeling which must always be present to the philosophic mind of the value of the *raison d'être* of any claim to allegiance and any assertion of obligation." Ernest Barker, *Plato and His Predecessors*, 305-306. Bentham's advocacy of preambles, however, emphasizes the fact that knowledge of the law is required before persuasion can be added to command. See *op. cit.*, Vol. I, 159-162; also Vol. VI, 519-520. See also the *Politics of Aristotle* (Newman), No. 1, 440.

<sup>54</sup> *Ibid.*, Vol. I, 159.

<sup>55</sup> *Ibid.*, 158. The kind and degree of publicity given to the penal code and to contract law suggested particular problems. With regard to contracts and wills of sufficient value, it should be required that they be written upon stamped paper

Whereas the notification of particular codes consisted in an elaborate publicity scheme, an institutionalized program of education is proposed for the promulgation of general legal principles. The General Code, a textbook in law or morals which every schoolboy might readily understand, should be given an important place in the school curriculum as a course in law or ethics, memorized as a catechism, translated into various languages, and converted into poetry.<sup>56</sup> For the instruction of the poorer classes, the former practice of reading laws as a part of the divine service should be revived. The laws relating to husband and wife, for example, might be read at the wedding, those respecting parents and children at the time of baptism.<sup>57</sup>

The successful conclusion of any enterprise which would make legal knowledge universal appears incredible to more realistic reformers. Bentham had no doubts or qualms. If the nations of the world would promulgate according to his instructions the philosophically grounded codes which he would prepare for them, law would be so pleasantly studied,<sup>58</sup> so easily known,<sup>59</sup> so constantly retained,<sup>60</sup> that the professional monopoly of legal knowledge—in fact, the legal profession itself—would have no office to fill. The codes “would send their influence over the moral nature

bearing upon its margin a notice of the laws concerning that particular transaction. *Ibid.*, 159. For a detailed discussion of contract law promulgation and “promulgation paper,” see Vol. VI, 522. The promulgation of the penal code involved a special humanitarian consideration, predicated upon the preventionist character of utilitarian penal reform. Here it was necessary that specific punishments as well as the prohibitions themselves and their reasons should be promulgated, since the natural notoriety characteristic of some criminal laws never extends to the specific punishments which, however, provide the motives legislators rely on for obedience. *Ibid.*, Vol. I, 158. <sup>56</sup> *Ibid.* <sup>57</sup> *Ibid.*

<sup>58</sup> “If the study of law is dry, it arises much less from the nature of the subject, than from the manner, in which it has been treated. . . . The truths developed in the laws are interesting; and when they shall thus have been arranged and their connection exhibited, this study will become interesting to the young, instead of repulsive even to those who are compelled to engage in it. When it shall have been rendered easy of acquisition, it will even become a disgrace not to be acquainted with it.” *Ibid.*, 160.

<sup>59</sup> “The terms of the law may be clear and familiar: add to them the reason of the law, and the light is increased; no doubt rests upon the real intention of the legislator: the mind of the reader holds immediate communion with the mind of the author.” *Ibid.*, 160–161.

<sup>60</sup> The reasons annexed will serve as a kind of technical memory . . . a kind of guide in those cases in which the law was unknown: it would be possible to judge beforehand what its regulations would be. . . .” *Ibid.*, 161.

of the people . . . they would so infuse themselves into their minds that they would form a part of the logic of the people."<sup>61</sup> The disappearance of lawyers as vendors of legal knowledge is clearly envisaged in an impassioned appeal "to the Citizens of the United States":

"Accept my services,—no man of tolerably liberal education but shall, if he pleases, to know—know, and without effort—much more of the law, than, at the end of the longest course of intensest efforts, it is possible for the ablest lawyer to know at present. No man, be he even without education in other respects—no man but, in his leisure hours—so he can but read—may, if so it pleases him, know more of the law, than the most knowing among lawyers can possibly know of it at the present."<sup>62</sup>

It is to be presumed that lawyers and judges are products of the artificial character of a mature legal system. Whether this artificiality results from the conscious design of the legal profession,<sup>63</sup> the neglect of legislators,<sup>64</sup> or the inexorable progress of civilization,<sup>65</sup> the presence of such professional classes has ostensible implications for the problem of making law known. They may best be treated within the manageable range of American legal history.

## V

More than a century before Bentham wasted his eloquence on President Jefferson, all of the early American colonies except Maryland experienced a less doctrinaire codification movement under a peculiar set of conditions.<sup>66</sup> The movement was creative rather than reformatory in character. In the absence of such technical apparatus as lawbooks and lawyers, and in the presence of conditions too primitive for a sophisticated legal system, the colonies contrived simple codes which resembled the dooms of the

<sup>61</sup> "If laws were founded upon reason . . . obedience to the laws would come to be scarcely distinguishable from the feeling of liberty." *Ibid.*, 161.

<sup>62</sup> *Ibid.*, Vol. IV, 483.

<sup>63</sup> Bentham, *op. cit.*, Vol. VI, 520, 543–544.

<sup>64</sup> *Ibid.*, Vol. I, 157; Vol. VI, 520.

<sup>65</sup> "With the progress of civilization . . . what otherwise would have remained common, becomes appropriated to particular classes. . . . Law perfects its language, takes a scientific direction, and, as it formerly existed in the consciousness of the community, it now devolves upon the jurists. . . . Law is henceforth more artificial. . . ." Savigny, *Of the Vocation of Our Age for Legislation and Jurisprudence* (Trans. by Howard), 28.

<sup>66</sup> Pages 1073–1077 of this study are, for the most part, an interpretation of the relevant material in Aumann, *The Changing American Legal System*; Reinsch, *English Common Law in the Early American Colonies*; and Morris, *Studies in the History of American Law*.

Anglo-Saxon kings.<sup>67</sup> In the seventeenth century, when the laws consisted chiefly of rough principles of native equity, local in character, knowledge of the law was but gradually, and even begrudgingly, abandoned to a professional class of lawyers and judges.<sup>68</sup> Clerks and educated laymen sometimes functioned as vendors of legal skill, but knowledge of the law in the early American colonies was, to a considerable degree, an amateurish pursuit in which the simple codes became an important source of direct legal instruction. The importation of a more elaborate system and the encroachment of a professional monopoly were vigorously resisted for a considerable period after the new world had outgrown its indigenous legal system.

It is interesting to note, however, in connection with the problem of promulgation that the age-old confusion between the actual publication of laws and their natural notoriety was clearly evident in the more theocratic New England colonies, where the "judicials of Moses" were an important source of law.<sup>69</sup> The Massachusetts Body of Liberties, for example, guaranteed residents against punishment except by laws "sufficiently published." There is the characteristic Puritan exception, however, that in case of a defect in a particular law a person might be punished under the divine law as interpreted by the magistracy.<sup>70</sup> An important document drafted by John Winthrop in 1642 illustrates in terms of promulgation the conflict between Puritan legal doctrine and the native equity which was codified and published directly to the

<sup>67</sup> See Reinsch, *op. cit.*, 7, 11, 53-57; Aumann, *op. cit.*, Chaps. I, III; Morris, *op. cit.*, 41-46.

<sup>68</sup> According to Professor Aumann, the extent to which the colonies could and did adopt the provisions of the common law during the course of the seventeenth century is a matter of dispute between two groups of historians. See *op. cit.*, 7-9. Their differences are largely a matter of emphasis and interpretation, however, and have no particular relevance to the subject of promulgation.

<sup>69</sup> Reinsch, *op. cit.*, Chap. IV; Aumann, *op. cit.*, 12, 22, 25. This ambiguity is to be explained by distinguishing between the theory of law and the administration of law in the early New England colonies. Although the Mosaic Tablets and the Bible were usually only secondary sources of law, the inviolable sovereignty of God was part and parcel of Puritan doctrine. Thus the Massachusetts Body of Liberties was not really promulgated as law, but the general court was authorized to consider it as a code of rules having the full force of law. See Morris, *op. cit.*, 30-38; Aumann, *op. cit.*, 10-11; 58-61; Miller, *The New England Mind*, 197-198; Parrington, *Main Currents of American Thought*, Chap. III; Reinsch, *op. cit.*, 13-16; Figgis, *Divine Right of Kings*, 223.

<sup>70</sup> Massachusetts Body of Liberties, *Harvard Classics*, Vol. XLIII, 66-67.

people. "It is needful that all men should know the laws, and their true meanings, because they are bound to them, . . . therefore it is needful they should be stated and declared as soon as is possible";<sup>71</sup> Nevertheless, since God was the only lawgiver and the law was always unchangeable, ignorance of the law was an insufficient excuse for violation.<sup>72</sup>

Although these two sources of law, the will of God and the native common law, were in one respect competitive, both were hostile to the infiltration of lawyers and the adoption of the common law. For reasons of prestige, the magistracy did not wish to relinquish its interpretative function to the judiciary; while a genuine frontier antipathy for a strange legal system and a natural preference for the general intelligibility of an indigenous common law account in part for the hostility which greeted the common law and lawyers in the seventeenth century.<sup>73</sup> The mass of men preferred a layman's law, promulgated by common sense and custom, in spite of its apparent inadequacy to meet the needs of a rapidly growing society.

The codification proposals which spread out over the eighteenth and culminated in the nineteenth century with the Field Code were part of a general movement to improve social and political institutions. In so far as the purpose of the movement to reform legal practices was to promulgate the law, it emanated from two sources. One of the minor points of opposition to the common law in the post-Revolutionary War period was its unfamiliarity,<sup>74</sup> which contributed to an appeal for an American code of law calculated upon the plainest possible principles and expressed in less barbarous nomenclature. At the beginning of the nineteenth century, the most zealous reformers had not yet abandoned hope for a legal system which would make a professional monopoly of legal knowledge impracticable. The idea then prevailed that the publication of judicial decisions served the purpose of disseminat-

<sup>71</sup> *Arbitrary Government Described and the Government Vindicated from That Aspersions* (1644). *Harvard Classics*, Vol. XLIII, 99-100. <sup>72</sup> *Ibid.*, 99.

<sup>73</sup> Reinsch, *op. cit.*, 12; Morris, *op. cit.*; Aumann, *op. cit.*, 46.

<sup>74</sup> "It should be mentioned that a considerable body of opposition to the English common law sprang from sources which were not patriotic or political in character, or influenced by the dictates of some special interest. It was an opposition which was derived from a somewhat different set of circumstances and may be explained as being part of the frontiersman's usual opposition to scientific law." Aumann, *op. cit.*, 82.

ing legal knowledge and intelligence directly to the people. "The publication of such reports," remarked one writer of the period, "is the promulgation of the laws. . . . In no other way is it possible to make them generally known."<sup>75</sup> The same writer may have been a student of Bentham, for he calls special attention to the fact that they were "promulgated along with the principles on which they were based."<sup>76</sup> On the other hand, exhortations to codify came from within the legal profession itself. By the 1820's, the common law had assumed such unmanageable proportions that it was not even known to the lawyers and judges. Some of the more eminent jurists, notably Kent and Story, were bent on saving the common law by promulgating it to the judiciary and to the lawyers.<sup>77</sup>

Field, the reformer whose codes were finally adopted, and then ignored in several states, seems to have had two sorts of promulgation in mind. First, proper codification would consolidate the position of the legal profession by making the law known to the lawyers and judges. Orderly classification, elimination of confusion and uncertainty, and better organization achieve a kind of indirect promulgation by narrowing the area of uncertainty.<sup>78</sup> Secondly, Field's code purported to restore to the layman the possibility of learning what the rule of law was in a particular case by reading the code.<sup>79</sup> The index would serve as a useful guide to persons who could recognize and identify legal situations as they encountered them.

In these reform movements, the preëxistence of law is used as an argument both for and against codification, depending upon the kind of natural notoriety which is attributed to preëxistent law. Pound points out that the conception of natural law was a serviceable theory in the codification movements of the late eighteenth and nineteenth centuries. The judiciary was thought to possess a dialectic which enabled it to find the right rule in every case. "Men

<sup>75</sup> Elijah Paine, Jr. (Counsellor at Law), *Reports of Cases Argued and Determined in the Circuit Court of the United States for the Second Circuit, Comprising the District of New York, Connecticut, and Vermont*. Cf. 27 *North American Rev.* 179, July, 1928. (Quoted in Aumann, *op. cit.*, 73).

<sup>76</sup> *Ibid.*

<sup>77</sup> See Aumann, *op. cit.*, 127-129.

<sup>78</sup> As finally adopted, the Field codes were mainly procedural in character. Field's proposals, however, and the arguments which were directed against them centered around the codification of substantive private law. See Field, "Codification," 20 *Amer. Law Rev.*, 1. Compare Field's argument with that of Bentham, *op. cit.*, Vol. VI, 520.

<sup>79</sup> *Ibid.*

thought it possible to discover a body of fixed and immutable principles, from which a complete system perfect in every detail might be deduced by purely logical operations, and held it the duty of the jurist to find them, of the legislator to promulgate them in the form of a code."<sup>80</sup> In the Field-Carter controversy, however, the preëxistence of law is offered as a reason why codification is futile.<sup>81</sup> In the view of the historical school of jurisprudence, to which Mr. Carter belongs, codification is both impossible and unnecessary because: (1) judges and legislators necessarily function in a strictly medieval capacity as declarers and promulgators of preëxisting custom; (2) it is only in the exceptional case of doubtful custom that it is necessary to declare the law in a particular decision or statute, for the members of society are familiar with its customs, "and in following them, follow the law."<sup>82</sup> To codify the private law would be to disrupt its orderly unfolding.

For some purposes, the contemporary law exhibits considerable faith in the ability of God and reason to promulgate natural legal principles to the mass of men. In those areas of the common law where conscionable conduct is a familiar standard, the law is never done presuming that man knows the unwritten law because he is a creature of reason and conscience. The natural notoriety of preëxistent principles bridges the interstitial areas of the law. Its philosophical identity with reason permits persons to be held responsible under natural principles of justice deduced *ex post facto* by the courts. For most purposes, however, jurisprudential thought prefers Sir Edward Coke's dictum that only lawyers and judges possess the dialectic which lifts the mask of mystery from the law. It is the only point of view consonant with the free functioning of due process, judicial review, and the doctrine of extra-constitu-

<sup>80</sup> Roscoe Pound, *Spirit of the Common Law*, 145-146.

<sup>81</sup> Carter, "The Provinces of the Unwritten Law," 24 *Amer. Law Rev.*, 1-24.

<sup>82</sup> Carter, "The Ideal and the Actual in Law," *Reports of American Bar Association* (1890), Vol. XIII, 217-225. Taken together, the two articles by Mr. Carter referred to above present a curious argument. Since law is essentially custom, Mr. Carter suggests it is, "for the most part," known to the people. And it is unnecessary to codify that which is generally known. On the other hand, codification is impossible for the very reason that the law can never be known to anyone. "One conclusion is easily demonstrated; and that is that it is impossible to write down the law applicable to *any future* transaction because it is impossible to know the law applicable to any future transaction." Thus the law possesses at the same time the opposing virtues of natural notoriety and complete unknowability, both of which argue against codification.

tional limitations.<sup>83</sup> What is needed is a law which exists independently behind the judge but is known to him only, a law which possesses not only the notoriety of the law of nature plus the sanctity of immemorial custom, but also the mysteries of the law of God and the enigmas of accumulated wisdom. As Coke admonished James I, the common law will not lift its veil even for a king.

The direct promulgation of law to the mass of men is, in fact, quite generally regarded as being unnecessary, impracticable, or impossible. In those areas where its common sense identity with custom and reason precludes the need for lawyers, it is unnecessary, as Carter has shown, to promulgate that which is already known and followed. Within that area of law "artificial" enough to permit lawyers and litigation, direct promulgation is impracticable since only a professional could understand it. And in a more refined jurisprudence there still remains an area in which the law is so uncertain, its enigmas so perplexing, that judges within the same jurisdictions differ among themselves as to what the law is. Here promulgation is impossible, for there is no knowable rule to obey. Here the judge acts in a capacity which Confucius approvingly called "the rule of man",<sup>84</sup> and which Bentham condemned as "pure suffering without instruction."<sup>85</sup> The rubric which ended the Japanese code of 1790—"not to be seen by any but officials"—might well be attached to a portion of any modern legal system.

On the other hand, the promulgation principle still imposes certain limitations on legal theory and the enforcement of legal rules. They are chiefly of three kinds: (1) prohibition of *ex post facto* laws; (2) the deferred execution of statutes; and (3) the publication of statutes, ordinances, and administrative rules.

(1) To square the retroactive nature of judicial review with the moral injunction that laws must be knowable in point of time, legal theory supplies the void *ab initio* doctrine. Against the argument that a "court house veto" deprives a person of his right to know what the law is before its obligations attach is set the traditional American theory that a law held to be unconstitutional never existed at all, being void *ab initio*.<sup>86</sup> On a higher level of ra-

<sup>83</sup> Judicial review, whether it is based on an interpretation of the law of nature, the due process clause, or a statutory enactment, rests on the assumption that judges, and judges only, can ultimately divine the mysteries of the law.

<sup>84</sup> Wigmore, *Panorama of the World's Legal Systems*, Vol. II, 483-484.

<sup>85</sup> Bentham, *op. cit.*, Vol. VI. 519.

<sup>86</sup> Rep. David J. Lewis of Maryland, arguing for the Supreme Court bill of 1937 and against judicial review, declared; "A court house veto fails fatally, besides,



tionalization, there is a continuing argument as to the retroactive character of the decisional process which centers around a citizen's right to know the law before its penalties can be imposed. The hostility of the legal profession to the so-called realist school of jurisprudence and all systems of legal theory which fail to put the law behind the judge, and the struggle to maintain the preëxistence of law, are standing acknowledgments of the promulgation principle. "The reason," Gray says, "why courts and jurists have so struggled to maintain the preëxistence of law . . . and why Carter says that they are the discoverers of the law, is the unwillingness to recognize the fact that the courts, with the consent of the state, have been constantly in the practice of applying in the decision of controversies rules which were not in existence and were, therefore, not knowable by the parties when the cause of the controversy occurred."<sup>87</sup>

Although there is at least one case in which the Supreme Court held a state law unconstitutional because it failed to supply a knowable standard of conduct,<sup>88</sup> laws which are, as a matter of fact, unknowable will not ordinarily be found contrary to natural principles of justice or to due process of law. Criminal laws, however, which are unknowable in point of time are invalid at common and constitutional law. And according to Blackstone and James Wilson, who see no logical distinction between retroactive civil and retroactive criminal laws, they are invalid because they violate the "promulgation principle" by denying to everyone *ipso facto* the possibility of knowing what the law is.<sup>89</sup> Likewise, the common

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because since the citizen is conclusively presumed to know the law, and is entitled to know whether it is law when it passes, to fashion his conduct accordingly, any veto should take place before the obligations of the law can attach." *Cong. Rec.*, Vol. LXXXI, Part 2, p. 1983. <sup>87</sup> *Nature and Sources of Law*, 97-98.

<sup>88</sup> In this particular case, the Supreme Court of the United States found a statute to be contrary to due process of law because it failed to provide a standard of conduct which it was possible to know. The Court suggests that the general public or a particular group of persons whom the government seeks to regulate has a right to know what are the rules and standards which have been prescribed for them. *International Harvester Co. of America v. Commonwealth of Kentucky*, 234 U.S. 216 (1914).

<sup>89</sup> There is one kind of promulgation more unreasonable, Blackstone says, than writing laws in small script and posting them on high pillars. "That is called making laws after the fact." *Op. cit.*, Sec. II, 45. James Wilson, a professed student of Blackstone, also declares that *ex post facto* laws are invalid because they violate in the most flagrant manner "the promulgation principle." The espousal of such a notion by one of the Constitution's framers appears to lend credence to the argument of some scholars that the *ex post facto* clause in the United States Constitution

law rule, that, unless otherwise provided for by statutory or constitutional authority, statutes do not go into effect until the formalities of enactment are complete is based upon the apparent injustice of putting laws into effect before it is possible for them to be known.<sup>90</sup>

(2) A more eloquent acknowledgment of the promulgation principle may be found in state constitutions, many of which provide that, except in cases of declared emergency, statutes shall go into effect a fixed period (usually thirty to ninety days) after the formalities of enactment are completed.<sup>91</sup> The deferred execution of federal penal statutes reflects a similar humanitarian regard for the right of the individual to acquaint himself with the law.<sup>92</sup> This is a kind of constructive notification, "designed to secure, as far as possible, the public promulgation of law before parties are bound to take notice of it, and to obviate the injustice of the rule which should compel parties at their peril to know and obey law which in the nature of things they could not possibly have heard."<sup>93</sup>

(3) The eighteenth-century practice of proclaiming laws officially at public meetings has been abandoned as impracticable, but the colonial forms of posting and distributing copies have been followed to the present day.<sup>94</sup> Provisions in several state constitutions purport to soften the harsh presumption of legal knowledge and to accommodate the legal profession by requiring the publication of state laws as a formal step in their authentication,<sup>95</sup> although Indiana is the only state providing in its constitution for prompt distribution of statutes to counties in the manner of fourteenth-century England.<sup>96</sup> A few states go so far as to exhaust the reasonable

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was originally intended to apply to civil as well as to criminal laws. See O. P. Field, "*Ex Post Facto* in the Constitution," 20 *Mich. Law Rev.* (1921), 315-331. It is to be noted in this connection that the deferred execution and the publication of statutes tend to follow the legal distinction between retroactive civil and criminal laws. Municipalities are uniformly required to publish their penal ordinances, while only the most important civil ordinances are usually published; and the delayed execution of federal laws is given special application with respect to punitive measures.

<sup>90</sup> Cooley, *Constitutional Limitations*, 155.

<sup>91</sup> A digest of constitutional provisions relating to the deferred execution and publication of statutes as they affect the presumption of legal knowledge may be found in Cooley, *op. cit.*, 156-157. Such provisions are also contained in Stimson, *Federal and State Constitutional Provisions*, 255-256; also in *State Constitutions, Comparative Provisions*, compiled by the Legislative Reference Bureau of the Michigan State Library.

<sup>92</sup> See Magruder and Claire, *The Constitution*, 41.

<sup>93</sup> Cooley, *op. cit.*, 155.

<sup>94</sup> See Wilson, *op. cit.*, Vol. I, 57.

<sup>95</sup> Cooley, *op. cit.*, 155-156.

<sup>96</sup> Indiana Constitution, Art. 4, Sec. 28.

possibilities of general publicity by publishing their statutes in official state papers and in private journals.<sup>97</sup>

In the field of local law, legislation is still promulgated directly to the people who are expected to obey it. The common practice in cities, towns, and villages is to publish in newspapers or post in conspicuous places all penalty ordinances and the more important municipal legislation.<sup>98</sup> In spite of the fact that such publications are usually read by only a few people who are on the lookout for them, states frequently impose heavy mandatory costs on their municipalities for the publication of ordinances.<sup>99</sup> In some states, the legal rate for such advertising is so great that ordinances are published in obscure journals with little or no circulation in the territory affected by the law.<sup>100</sup> In Indiana, as in other states, the cost of publishing such ordinances in newspapers is sometimes so exorbitant that building codes and other needful legislation cannot be enacted.<sup>101</sup>

One of the interesting phases of the recent and current effort to secure more orderly promulgation of administrative rules is the recrudescence of the argument that law is not truly law unless it is promulgated to the persons who are expected to obey it. One important result of the Hot Oil case<sup>102</sup> and the flood of comment which it provoked lies in the fact that they exposed the existing disorder in the publication of administrative rules. Probably as a consequence, Congress provided for the publication of the *Federal Register*. Of particular interest here is the rhetorical use to which the best literature on promulgation was put. The defective promulgation of statutes and ordinances by instruments which are, to the average citizen, as obscure as Caligula's pillar, seems to be regarded as either inevitable or unimportant. It is not a matter of judicial cognizance or of serious comment.<sup>103</sup> A case, however, in which "the persons affected, the prosecuting authorities, and [even] the courts

<sup>97</sup> In Iowa, for example, statutes are published in two papers of general circulation; in Wisconsin, in a private newspaper which is designated as the "official state paper." In Louisiana, statutes are published in the official state paper, the constitution providing that the laws shall take effect upon publication in the city where the paper is published, elsewhere not until thirty days afterwards.

<sup>98</sup> Gilbert Bailey, *A Definition and Appraisal of Legal Advertising, with Special Application to a Selected Group of States* (Bureau of Government Research, Indiana University, Bloomington, Ind., 1941). <sup>99</sup> *Ibid.*, 43-47.

<sup>100</sup> See Harvey Walker, *Public Administration*, 296. <sup>101</sup> Bailey, *ibid.*, 55.

<sup>102</sup> *Panama Refining Company v. Ryan*, 293 U.S. 388 (1935).

<sup>103</sup> See Cooley, *op. cit.*, 155.

were alike ignorant" of the law produced a small literature dealing with the right of an individual and the responsibility of the lawyer to know the law.<sup>104</sup> Bentham's "tyranny of an unknown law" was inaptly quoted; analogies were drawn between the obscurity of unnotified administrative rules and the imperspicuity of Caligula's pillar; and attention was called to a number of cases in which the improper provisions for publishing and recording administrative rules counted heavily in the invalidation of state laws involving the delegation of legislative power to administrative agencies.<sup>105</sup>

Some of these cases affirm or imply the right of the individual to know by reading what the law is, as well as the duty of the legislator to assure the legal profession of an orderly record of administrative rules.<sup>106</sup> It is not to be concluded, however, that the judiciary's hostility to improperly promulgated administrative rules is based solely on a suspicion of the administrative process. In one sense, the promulgation of subordinate legislation is to statutes what promulgation by the prince was to natural law in Aquinas' cosmic legal order: the fitting of general rules to particular sets of conditions. For the reason that administrative rules do prescribe standards of conduct which are specific and sometimes technical, it is particularly urgent that they be promulgated in an orderly manner, and even elaborately, to the persons who are expected to obey them. For the same reason, it is worth while to promulgate them, since the duties which they impose are definite enough to be knowable.<sup>107</sup>

<sup>104</sup> *Panama Refining Company v. Ryan*, 293 U.S. 388 (1935).

<sup>105</sup> C. T. Carr, "Ignorance of the Law", 9 *State Government* 149 (1936); E. E. Witte, "A Break for the Citizen", 9 *State Government* 73 (1936); J. B. Andrews, *Administrative Labor Legislation* (1936), 103-107; L. A. Jaffe, "Publication of Administrative Rules and Orders" (1938), 24 *Amer. Bar Assoc. Jour.* 393-397; J. H. Ronald, "Publication of Federal Administrative Legislation" 7 *George Washington Law Rev.* 52 (1938).

<sup>106</sup> See, e.g., *State v. Retowski*, 36 Del. 330, 340-341 (1934); *Goodlove v. Logan*, 217 Iowa 98, 107, 251 N.W., 39, 43 (1933); *State v. Grimshaw*, 49 Wyo. 192, 209, 53 P. (2d) 13, 18 (1935).

<sup>107</sup> "Now in order to have the meaning of the law rightly understood, it is incumbent upon the promulgators to use the utmost possible perspicuity. If anything appear to be obscure in the laws, its interpretation is to be sought from the Legislator or from those who have been publicly appointed to administer justice in accordance with them. For it is their special function to apply the laws to individual instances by interpretation, or, in other words, to make clear, by the process of specifying individual acts, just what provisions the legislators have made regarding them." Pufendorf, *Elementorum Jurisprudentiae Universalis Libri Duo* (trans. by W. A. Oldfather), Vol. II, 154.

The relation of administration to the problem of making law known is an ancient one. In a fundamental sense, the principle of promulgation is anterior to law itself, which is only one means, far short of ideal, of objectifying intelligence taking the imperative form.

That law is procedurally inferior to the free intelligence of a guardian administrator is assumed in Plato's *Republic* and argued in one of the most vigorous portions of the *Politicus*.<sup>108</sup> Law was omitted from the ideal state because Plato assumed that every man could have a philosopher king always at his elbow directing every act by the art of true knowledge untrammelled by rules contrived to fit average cases. In the *Politicus*, he concedes the practical usefulness of general rules in making the individual aware of the specific function which his particular station demands:

"The legislator who has to . . . enforce justice . . . will not be able, in enacting for the general good, to provide exactly what is suitable for each particular case. He will lay down laws in a general form for the majority, roughly meeting the cases of individuals; and some of them he will deliver in writing, and others will be unwritten . . . for how can he sit at every man's side all through his life and prescribe for him the exact particulars of his duty."<sup>109</sup>

Yet Plato makes it quite clear that general rules are always prejudicial to the statesman's art: "No one who really had the royal science, if he had been able to do this [sit at every man's side], would have imposed upon himself the restriction of having a written code of laws."<sup>110</sup>

Commonly, theories of law which deal with the management of conduct have not been so provocative as to assume for a moment that general rules are necessary merely because government administrators cannot be always at every man's side. Conventional notions ordinarily argue, as Aristotle did, that general rules prescribing equitable treatment for like cases are not merely indispensable instruments for making criteria of conduct known, but an equalitarian requirement of human dignity and a practical safeguard against "the rule of men." To square the same assumption with observed facts of administration, modern legal thought supplies a useful fiction, lacking in Aristotle, which glosses over the capricious wisdom of administrators with the words "interpretation" or "application."

<sup>108</sup> *Dialogues of Plato* (Jowett), Vol. III, 580-581.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

As a matter of fact, however, the singular importance of administrative promulgation has been recognized in many ways. Bentham's hope for a code of law intelligible to the average man, implemented by universal instruction in general legal principles, has never been realized, but the publicity schemes which he advocated for his "Particular Codes" have their counterparts in certain techniques peculiar to the administrative process. Affected groups often participate freely in the drafting of particular codes to which they propose to conform, and administrative rules are often "proclaimed" at conferences between officials and affected groups. Direction and guidance in advance of action, exhortation, cajolery, and warnings against eventual penalties help reduce the danger that nonconformity will result from ignorance of the law. Plato's admonition that law, once admitted, should be prefaced always by philosophic preambles which add persuasion to command is accepted as a sound principle of administration.

The fiction that positive law is known to everyone through reason and custom has not been extended to the administrative application of general rules. And the security of Aristotelian generality has been so compromised by the efficiency of Platonic particularity that, in the name of "individual application," administrators may even give persons specific notice and official declaratory judgments of their duties without the "dog law" imposition of a prior penalty.

## MOELLER VAN DEN BRUCK: INVENTOR OF THE "THIRD REICH"

GERHARD KREBS

*Western Reserve University*

In December, 1922, a resident of Berlin finished the manuscript of a book which, although far from becoming a best-seller, was destined to make history, if only through its title. The book was *Das Dritte Reich*,<sup>1</sup> and its author, Arthur Moeller van den Bruck, was a German intellectual, then in his forties, who had a theory purporting to explain Germany's downfall as well as a vision of her recovery and return to a leading position in the world.

One may well be uncertain as to whether Moeller, had he lived, would have found himself altogether in agreement with the policies and methods of the régime for which he accidentally<sup>2</sup> furnished so attractive a label, or whether he would have found himself among the dead on the morrow of June 30, 1934; but there can be little doubt that the author of *Das Dritte Reich* belongs among the contributors to the creed in the name of which Germany is ruled to-day.

Moeller van den Bruck was born in 1876 in the Rhineland, the son of a middle-class architect and Prussian official whose family went back to Lutheran pastor stock in Saxony. From his mother's side he inherited Dutch-Spanish blood and, from her Dutch maiden name, the more romantic-sounding portion of his pen name. His formal education was never completed after he was expelled from the *Gymnasium* at Düsseldorf as penalty for his indifference in class, resulting from his preoccupation with modern German literature (social lyrics) and philosophy (Nietzsche),<sup>3</sup> which to the lad of sixteen seemed of vastly greater "social significance" than what his teachers had to offer. Although thus denied the requirements

<sup>1</sup> Hamburg, 1923. A condensed translation by E. O. Lorimer was published as *Germany's Third Empire* (London, 1934, and New York, 1941). The page references in the body of this article refer to the 1934 London edition.

<sup>2</sup> Moeller hesitated between *Das Dritte Reich* and *Die Dritte Partei* as titles for his book.

<sup>3</sup> About Moeller's earlier life and his admiration for the Nietzschean heroic, "dionysian" way of life we know through the reports of his first wife, quoted in part by Paul Fechter, "Das Leben Moeller van den Brucks," *Deutsche Rundschau*, April, 1934, pp. 14-20. Fechter also contributed a biography of Moeller to *Die Grossen Deutschen* (5 vols., Berlin, 1935-1937), in Vol. 4, pp. 570-583, and wrote a brief book, *Moeller van den Bruck; Ein politisches Schicksal* (Berlin, 1934).

for entering a university, young Moeller nevertheless visited several intellectual centers of Germany, where he attended literary lectures, undertook some literary work himself, and became acquainted with kindred souls, all the while finding himself increasingly at odds with the "Prussianized" German state and its policies as of the end of the nineteenth century. As others (notably his hero Nietzsche) had done before him in a similar spiritual crisis, Moeller decided to leave Germany. He had at one time considered the United States as a haven, but in 1902 he went to Paris, leaving behind him his young wife, who was to give birth to his son a few months later. By thus renouncing Germany, we are told,<sup>4</sup> Moeller ultimately discovered the eternal Germany beyond the state, namely, the German nation, of which he was by birth a part and from which, he found, one could not secede at will. This discovery of the nation, aided no doubt by a nationalistic trend among younger European writers with whom he came into contact in France and Italy, manifested itself in Moeller's literary production: he turned from esthetic-critical to historic-political writing.

A work entitled *Die Deutschen* was begun in Paris and appeared in eight volumes between 1904 and 1910, each volume dealing with a different one of what to Moeller appeared characteristic German types, with famous men of politics, letters, and the arts—revealingly enough, no men of science—serving as objects of his sketches. To supplement *Die Deutschen*, Moeller, back in Germany, laid plans for a series of monographs on the values characteristic of other nations (*Die Werte der Völker*). The series was intended to treat the characteristics of "old" nations: Italian beauty, French skepticism, British common sense, and those of "young" nations:<sup>5</sup> German *Weltanschauung*, American will, the Russian soul;<sup>6</sup> but only the volume on Italy was ever published (1913). In 1916, Moeller glorified those Prussian ways which had driven him from Germany in 1902 in his book *Der Preussische Stil*, anticipating Spengler's *Preussentum und Sozialismus* by four years. In it, professing his spiritual kinship to Hegel and Clausewitz, Moeller praised Prussia's tradition, army, and officialdom and urged the "Prussian style" as against the "Viennese style."

<sup>4</sup> Fechter, in *Deutsche Rundschau*, Apr., 1934.

<sup>5</sup> On "old" and "young" nations, see below, note 15.

<sup>6</sup> In collaboration with Merezkovsky, Moeller had undertaken to translate Dostoevsky's writings into German.



During 1917–1922, Moeller, within his limits as an intellectual, became politically active: he contributed several articles to the magazine *Die Deutsche Rundschau*; wrote an appeal to President Wilson warning against peace policies dictated by France (*Das Recht der jungen Völker*, 1919); debated at gatherings of young intellectuals; helped organize the *Juniklub* in 1919, a select group of conservatives which was the forerunner of the *Herrenklub*;<sup>7</sup> published the magazine *Das Gewissen* (later *Der Ring*) together with Heinrich von Gleichen; and in 1922 edited *Die Neue Front*, a collection of articles issued as a manifesto by Moeller, von Gleichen, and other prominent conservatives of their circle. Finally, in 1923, Moeller published *Das Dritte Reich*, his final statement of his credo of the “new nationalism.”

The book accused, challenged, appealed in a style as forceful as Nietzsche's ejaculatory manner of writing. It was the passionate manifesto of an embittered patriot in whom despair was mingled with hope, who felt humiliation over the peace treaty and disillusionment over the political instability of his country and—as it seemed to him—the political blunders of its leaders, and who sensed the need of his bewildered compatriots for an explanation of what had happened to them, as well as for a plan promising future security. He did offer an explanation and hold out a hope to them. The explanation: the influx into German life of an alien principle has corrupted the German nation, caused the political parties to forsake the “lofty spiritual plane of political philosophy” for liberalized policies void of a true political idea, and brought to the fore in November, 1918, revolutionaries unworthy of the name. The hope: a second, a conservative, revolution (that is, a change of fundamental attitudes, not merely of constitutions) must be achieved which would deliver Germany from economic and political distress and make her a great and respected nation again—if the Germans would only abandon all parties and classes and unite as a nation.

## II

An examination of German history before and during the Revolution of 1918 precedes the chapters which deal with the book's main purpose, namely, to give an “analysis of the political parties” and their ideologies: of the proletarian-socialist ideology in whose

<sup>7</sup> The *Herrenklub*, it is remembered, took the limelight in 1932 when it was said that the cabinet of von Papen was born there.

name the revolution had been made; of the liberal-democratic one which dominated the Weimar Republic; and of the reactionary-conservative one which opposed both. German history, especially since Bismarck's exit, appeared to Moeller as a record of failure. German policy had lacked the drive of a political idea that might have spurred the Germans on to new accomplishments and kept them from being content with the achievement of their long-dreamed-of unity. This "spiritual exhaustion" (p. 20) was at the basis of the dearth of men capable of carrying on the work of the great chancellor and of "daring to play the rôle of fate" (p. 19) as he had done. Likewise, it was responsible for the Germans' blindness to the untiring activity of their enemies who were busy encircling them. Loss of the World War was the price of that spiritual slackness and political blindness. Yet this price would not have been too high, had the ensuing revolution been more than merely an insurrection, and had it given birth to a spiritually renewed German race (p. 23).

However, the opportunity for such a spiritual rebirth by revolution—an opportunity which presents itself only once in the history of a nation, so the mystic in Moeller asserts (p. 18)—was wasted in 1918. The German people were given a democratic-republican constitution with the best trimmings known to their leaders, but they were not aroused by the "unwanted" events of November, 1918, to political consciousness, to the consciousness of Germany's mission in the world and the potentialities of leadership resting therein. They missed the opportunity to win through a revolution what they had lost through the War, and thereby to change the course of German history from failure to success.

The revolutionaries of 1918 were unequal to their task, Moeller charges with acrimony (p. 144). They were liberal opportunists rather than revolutionary fanatics (p. 204). They stopped after overthrowing the former state, which should have been only the preliminary to a true "spiritual revolution in ourselves and directed against ourselves" (p. 23). Instead of producing any original, German revolutionary principles or ideas, they committed the "immortal stupidity" (p. 24) of swallowing the enemy's bait of international mutual understanding, world democracy, and a League of Nations, and placated him by admitting the guilt of the former régime and playing a cringing policy of fulfillment (p. 28). The men of November, 1918, accomplished no German revolution; they only

imitated the West (p. 37) when they adopted the outworn ideas of nineteenth-century liberalism for their new republican constitution. They never asked what would become of Germany as a nation; they thought only of humanity, reasoning that "if the thought of humanity were victorious . . . then Germany would be cared for among the rest" (p. 225). Clearly, Germany in 1918 had been deserted by her genius—a genius, by the way, which Moeller describes as conservative rather than revolutionary (p. 206). Her people acted bureaucratically, as political dilettanti—"as we seem forever doomed to act" (p. 31)—where they should have acted dæmonically, with Nietzschean boldness (p. 31).

The "liberal" revolution of 1918 cannot be unmade. Yet it may lead to a second, a "conservative," one. While the liberal revolution, in its attempt to overthrow the old social order, was defeated by "eternal conservative forces," by "forces of tradition, of survival, of unalterable law"—especially the "law of gradation," that is, the primitive instinct to form groups, families, nations (p. 230)—the conservative revolution will stay within the continuity of history and thus have for its support "the momentum of the millennia that lie behind" (p. 233). The conservative revolution must be won; if it fails, Germany, and Europe with her, will be doomed (p. 24). Yet there is no reason to suspect that it will fail. Germany, Moeller rationalizes, really won the War militarily by holding out to the end against enemies ten times her strength; she only lost it politically when she let her opponents trick her, with their glittering ideals of liberalism, into "abandoning a war which [she] had not yet won" (pp. 34, 77). Since in 1916 Moeller had written that victory and defeat in war do not occur accidentally, but are assigned by the World Plan according to whether a nation is rising or declining,<sup>8</sup> one might be anxious for Germany's fate. But Moeller hopefully points out that Germans mature slowly and always take roundabout roads to find themselves (p. 35)—as he well knew from personal experience—so that there may yet be a long history ahead for Germany.

### III

"The principle of liberalism is to have no fixed principle"—some sort of modern sophism, one might call it; "liberalism is the death of nations" (pp. 77, 78): these are Moeller's major indictments

<sup>8</sup> "Schicksal ist stärker als Staatskunst," *Deutsche Rundschau*, Nov., 1916, p. 161.

against what he considers liberalism. The Germans, until he came along, were unaware of these truths, and even used to be under the illusion that they must adopt liberal ideas and introduce Western institutions in order to deserve not to be looked upon as backward. Imagining themselves in harmony with the general trend of human civilization, they set foot on the path of liberalism and, in 1918 and after, their revolutionary leaders copied the liberal ways into the new constitution. But instead of progress, Germany reaped ruin. Could there, Moeller exclaims, be a more terrible proof than this that "the ways of liberalism are not ours"? (pp. 103, 104).

"Modern liberalism had its roots where the individual shook off the conventions of the Middle Ages" (p. 93), which he claimed, in the name of reason, enlightenment and science, to have the right to do, unaware that in reality he emancipated himself from what had theretofore been the sustaining foundation of his life. From the very beginning, however, liberalism was deluded by a false concept of liberty; for how could man demand "perfect individual and political freedom" if he is "biologically unfree" (p. 95)? This misconception is self-evident today, Moeller states, and the general bankruptcy of liberalism stands fully revealed ever since in 1918 the Allied statesmen, in the name of liberalism, lured Germany into surrender but subsequently broke their promise of a liberal "peace without victory." For then these statesmen abused the principles of liberalism, using them "as means to an end, as camouflage" (p. 82) for their desire to destroy Germany. Yet the scheme may backfire, Moeller warns; the Peace of Versailles may "result in such an exposure of liberalism to the eyes of all the world that liberalism will be unable to survive it" (p. 112).

Among the German youth, distrust and contempt for the principles of liberalism are general, Moeller asserts (rather prematurely at the time of his writing), and all political parties, tainted as they are with liberal ideas, are looked upon with suspicion by youth (pp. 110-111).<sup>9</sup> "If liberalism spelt freedom, then youth would not abandon it. But liberalism bears nowadays no relation to freedom. The liberal is a mediocre fellow. Freedom means for him simply scope for his own egotism, and this he secures by means of the political

<sup>9</sup> Besides, Moeller rejected parliamentary representation on the basis of democratic elections and equal suffrage as the rule of mediocrity, the cult of the average man, as Nietzsche had scornfully written. See Aurel Kolnai, *The War Against the West* (New York, 1938), p. 116, for a critical analysis of this attitude.

devices which he has elaborated for the purpose—parliamentarism and so-called democracy. Liberalism is only self-interest “protectively colored” (p. 110). This kind of criticism is hardly profound, dwelling as it does upon political abuses, expressing the dislike of certain Germans for certain countries labeled “liberal,” but skirting the theory itself, merely branding tolerance as unprincipledness and equality as the rule of mediocrity.

Democracy and democratic institutions thus appear to be nothing but handmaidens for the selfish liberal of Western vintage, unfit for importation into Germany. Although describing the Germans as “originally a democratic people” when they stepped out of the twilight of prehistory (p. 122), Moeller contends that they “lack the basis of democracy” and that “no inner craving for democracy has run like a guiding thread through the course of [German] history” (p. 121). Until 1918, it seemed that monarchy was foreordained for Germany, and only the opposition wasted time on discussions of supposedly needed democratic reforms (p. 122). Then the Revolution of 1918 brought all the trappings of democratic government to the German people. What it did not bring—as they were quick to discover—was true democracy, which “exists where the people take a share in determining their own fate” (p. 121). The reason? “Because the people came to power in such circumstances that we could neither respect ourselves nor command the respect of others” (p. 115). Unless “democracy is the expression of a people’s self-respect . . . it is no democracy at all” (p. 132).

Post-war democracy in Germany failed to meet Moeller’s standard: it did not give the people a share in their own fate. The party system and the electoral process divorced the masses from parliament and benefited only the opportunist parliamentarians and party bureaucracies (p. 120). Few students will deny that serious flaws existed in the application of democracy under the Weimar Constitution, and that the ideal representation of the people would be one which “remains in constant touch with the people.” But would they believe with Moeller that “a system of representation based on the estates,” which he calls “part of [the people’s] organic structure and not a mere mechanical device” (p. 130), would do a better job of representation than the political parties which the estates are to replace? Moeller merely makes an assertion without giving any details of the organization and operation of the estates from which their superiority over parties could be deduced. Mere

name-calling ("organic" as against "amorphous") does not prove much.

## IV

If liberalism and democracy each evoke a negative chapter in Moeller's book, socialism does likewise, and not least because of being wedded to the former two. It is not that Moeller rejects socialism outright; on the contrary, his Third Empire demands socialism for its foundation. But it must be a strictly German brand, in accordance with his dictum that "each people has its own socialism." The German socialism, which "is called to play a part in the spiritual and intellectual history of mankind by purging itself of every trace of liberalism" (p. 76), cannot be part of a system of Marxian world socialism based on the international proletariat and justified by materialistic concepts.

Marx is severely censured by Moeller, himself an idealist and irrationalist, for having "offered to men accustomed for tens of centuries to live for and by ideas, the lure of his materialistic thought and his materialistic conception of history" (p. 152). It was sheer presumptuousness on the part of Marx to have ventured to predict historical development. For life and history are incalculable, and if some men do have the gift of prophecy and the power to help to shape future events, such acute "sensibility towards the present" that will make its owner a "confidant of the future" can be claimed only by one who is "physically and mentally at one with the people" and not, like Marx, "a stranger in Europe," a Jew (p. 43). Neither the goal nor the direction of our history is known or predictable, Moeller stoutly maintains, and any cause-and-effect relations can be discovered only in retrospect. As for the historic present, men can be guided only by their will, their courage, and the voice of their inspiration (p. 40). While all of Moeller's writings bear the stamp of his theory of history, some of his earlier ones express it, perhaps, less ambiguously than does his last book. "It is our function as human beings to put into effect the World Plan . . ." and "to testify for predestination in history," he wrote in 1916.<sup>10</sup> "We must make up our minds to believe in missions according to which history moves. . . . Each nation fulfills its mission in history as each man fulfills his in life."<sup>11</sup> This predestination is

<sup>10</sup> *Deutsche Rundschau*, Nov., 1916, p. 162.

<sup>11</sup> *Ibid.*

beyond man's influence; "Nature herself makes the decisions."<sup>12</sup> This "metaphysical equilibrium" provides for wars, too. "The final outcome of war is always moral," the Hegelian in Moeller asserts, "as the reasons deciding over victory and defeat are moral reasons";<sup>13</sup> the victors being those destined in the World Plan to take the places of outgoing nations. The War of 1914, Moeller then confidently hoped, would be decided by the "law of rise and decline of nations," according to which "all aging states relentlessly sink down from their hegemonial positions,"<sup>14</sup> on which account Germany, as one of the "young" nations, seemed to have nothing to fear. Two years later, in November, 1918, Moeller explained that it was possible—the World Plan notwithstanding—for a "young" nation to suffer a setback, either because of its political inexperience or impetuosity or because of a coalition of "old" nations conspiring against it, but that a defeat in war will not break a "young" nation if only the peace treaty leaves unimpaired that nation's right of existence, growth, and freedom of movement. "Every war is decided only after the war."<sup>15</sup>

Moeller rejects Marxian socialism, not for its materialistic basis alone, but likewise for its connection with the proletariat. To be sure, he does not deny the existence of a proletariat, and even

<sup>12</sup> *Ibid.*, p. 166. Nature, which expresses her will through nations, appears to be a composite of many elements, including geographic factors, economic spheres, and individual genius. Behind these "there may be still mightier forces: cosmic relationships, in which physical relations are linked with metaphysical necessities" (pp. 166-167). "It is for the thinker to recognize these relations, for the artist to reveal them, and for the statesman to put them into effect" (p. 167). In "Der Untergang des Abendlandes; Für und wider Spengler," *Deutsche Rundschau*, July, 1920, pp. 141-170, Moeller points with emphatic approval to Spengler's rejection of causality in history and revival of historic destiny, and, in general, to the latter's interpretation of history from a "prime phenomenon" (*Urphänomen*).

<sup>13</sup> *Ibid.*, p. 162.

<sup>14</sup> *Ibid.*, p. 161.

<sup>15</sup> "Das Recht der jungen Völker," *Deutsche Rundschau*, Nov., 1918, p. 235. Moeller had first developed the concept of "old" and "young" nations—which must not be understood in terms of age in years—in 1906 in *Die Zeitgenossen* ("The Contemporaries"), a supplementary volume to *Die Deutschen*. At that time the "old" nations comprised the Latin, the "young" ones the Germanic, nations, excluding, however, England as a degenerate Germanic nation. In 1918, Moeller redefined the two types. "Age" of a nation now implied possession and saturation, also Bentham's concept of happiness, the ideas of 1789 dressed up as eternal ideals, and the confirmation of Malthus; while "youth" denoted claim, readiness and work, also Nietzsche and Darwin, and the refutation of Malthus. Bulgaria, Finland, and Japan were the "young" nations, and Prussia, their prototype.

acknowledges its "right to a recognized and stable position in a society dependent on industrial enterprise and proletarian labor" (p. 165); but his proletariat is not a socio-economic category, and the reasons given for its existence differ widely from those of Marx.

To Moeller, the proletariat is not the result of a particular stage in a country's internal economic development; rather, it has its roots in more external conditions, namely, the lack of *Lebensraum*. In other words, the population problem—which Moeller scathingly accuses Marx of having evaded (pp. 61, 155)—the pressure of a surplus population, accounts for the existence of a proletariat. Countries with sufficient space, food supplies, and raw materials to take care of their entire population, therefore, have no proletariat (p. 61).

As the existence of the proletariat as a group is not dependent upon a specific type of economic organization, so the individual's membership in that group, Moeller writes, is not based on definite economic criteria characteristic of that particular type of economy, such as the need to sell his labor for want of any other means of livelihood. Rather, being a proletarian to Moeller is a matter of possessing or not possessing certain inner qualities (p. 154). "The proletariat is what remains at the bottom" in a process of differentiation in which "inborn superiority asserts itself" (p. 162). Since raising himself out of the proletariat requires the individual's desire to do so, and since "the inertia of the mass remains," Moeller states that "there always remains a proletariat" (p. 163).

Regardless of one's opinion of Marxism, one must concede to Marx that at least he was capable of producing a definition of the proletariat in which the reasons for existence of the proletariat as a group as well as for its individual members are logically fitted together. This can scarcely be said of Moeller's definition, in which the inequalities of national material possessions create proletariats, while the inequalities of individual human endowment with inner values determine who belongs to the proletariat of a given country. Moeller could hardly deny that such human inequalities exist in all countries without regard to population figures, and that, by his own logic, the lowest group on the economic ladder would everywhere include the bulk of the poorly endowed individuals, yet he would permit the labeling of that bottom group as "proletariat" only in a country that is itself a "proletarian" country, i.e., has an



over-population.<sup>16</sup> Is it possible that the definition was framed, not by the discerning scholar, but by the promotor of a political cause, by the apostle of the "new national mission" (p. 74) of lining up and leading the "have not" nations against the "haves," France and England?<sup>17</sup>

The solution of the proletarian problem would seem to lie in relieving and ultimately removing the pressure of over-population on a nation's economy. Should Germany, then, attempt to solve her population question by measures of internal settlement, land improvement, and the like, converting the country into a "China-in-Europe"? Most certainly not, if Moeller had his way, for this would require the sacrifice of the "deepest German instincts: the urge to dare, to undertake, to conquer"; and would cause the Germans to "moulder in pettiness" (p. 69). Even before the War, he points out, Germany imported hundreds of thousands of illiterate Italians and Poles to do coolie work for which the "mentally superior" German proletariat, better educated and "qualified for higher grade work," was too good. "The proletarian problem is here crossed by a cultural problem" (p. 64), and Moeller comes close to Hitler's doctrine of the Aryan master race as expressed in Chapter XI of the first volume of *Mein Kampf*, except that he does not specifically claim a monopoly of such superior qualities for the Germans.

As much scorn as for internal colonization, Moeller expresses for all means of restricting the birth-rate as a possible partial solution of the disproportion between population and available space. For one thing, it would be an unheroic solution. Besides, "over-popula-

<sup>16</sup> The German "proletariat," under this definition, might enjoy a higher standard of living than the non-"proletarian" working class of, say, France. Moeller would probably reply that the cultural problem has to be considered along with the population problem (cf. *Germany's Third Empire*, p. 64).

<sup>17</sup> "The population problem . . . prevails amongst all nations who as the result of the War have lost the power to dispose freely of their human resources. . . . The population problem unites all conquered peoples in a common cause; and wherever it remains unsolved the nation is in effect a conquered people" (p. 67). Even Russia, with her vast *Lebensraum*, is included among the conquered, however strained the reasoning may appear. "The English working man can live because his country possesses the power to cater for its nationals; the French can live because they have more space than people. But the Russians cannot live, because they do not know what they can work with or what they can live on; and the German, Italian, and Central European peoples cannot live because they do not know either where they can work or how they can exist" (p. 68).

tion is part of Nature's design," he asserts; hence "Nature must solve the problem" (p. 69). The way she solves it, so it appears, is by allowing the stronger battalions to win. To "break forth forcibly," to "burst our frontiers," to provide new markets, are the methods recommended by Moeller—and obviously believed by him to be sanctioned by Nature—for the solution of Germany's population problem; but no particular country is named as the object of this "socialist imperialism" (pp. 65, 70, 73, 108).

Liberation of the German proletariat thus must be preceded by liberation of proletarianized Germany; its demands for social betterment must wait until her demands upon other countries have been satisfied. "For men can live only if their nations live also" (p. 37). It is in this light, perhaps, that Moeller's statement that "the proletarian is such by his own desire" (p. 161) should be read so as to sound least incompatible with his innate-qualities definition of the proletarian. Perhaps he meant that a proletarian remains a proletarian as long as he is unwilling to endorse a nationalist policy aimed at removing the obstacles that lie in the path of Germany's emancipation from population pressure. No doubt the statement was made as a challenge to organized labor to abandon its "narrow" and "calculating" proletarian class-consciousness, its socialist party affiliations, and its international outlook, and to adopt instead a new nation-consciousness, to realize that "the people of one country are the natural enemies of the people of the other" (p. 169), and to join hands with the Third Party, leader of the new nationalism. It was an attempt to mobilize the proletariat and redirect its revolutionary temper toward a nationalist goal, from a class war to a war of nations, to a "class war against mankind."<sup>18</sup> The proletarian must change his mental attitude first, must think of the nation above the self (p. 140), before he can expect an improvement of his material status. The proletariat must learn "to think of itself, not as a proletariat, but as a working class," the former term implying denial of the nation, the latter, sharing in its communal life (p. 167). "The problem of the proletariat is not that of its outward existence but of its inner quality" (p. 154). It will be finally solved only as the proletarian "realizes that it is not a question of capturing and distributing material wealth, but of taking an intellectual and spiritual share in immaterial values; a question not

<sup>18</sup> Kolnai, *op. cit.*, p. 329.

of grasping, but of deserving, not of arrogantly demanding, but of proving himself of equal worth" (p. 154).

Like the question of the proletariat, the whole problem of German socialism to Moeller is not primarily an economic affair. German socialism is something "organic" and capable of being put into practice, whereas Marxian socialism is mechanical and "purely theoretical." We learn that German socialism implies "a corporative conception of state and economics," and that it is based on "the group, . . . the community, . . . the corporative unity of the whole nation," similar to the guilds of the German past (pp. 74, 221). It will be a socialism based less on material participation than on "mutual understanding and coöperation between economic direction and labor effort, which shall establish harmony between profits and claims" (p. 256). Nothing more specific is revealed about that organic socialism, about details of its organization and functioning, about property or any concrete aspects of the rôle and interrelationships of the economic groups under it. All these things are of less importance to Moeller than the proper attitude of capitalist and workman, a mutual attitude of peace and friendliness where formerly destructive antagonisms prevailed. Such an attitude must be inspired in all by a feeling of loyalty to the nation and a consciousness of commonly sharing in its values. Thus where Marx had demanded that economic classes, and the conditions creating them, be abolished first, whereupon hostilities based on class differences would disappear, Moeller begins by demanding that the classes voluntarily bury their differences over their mutual superior interest in the nation, whereupon the classes will diminish in significance. Once this change of attitude, this major prerequisite of both German socialism and the Third Empire, has been accomplished, "we must *believe*" that the remaining problems of socialism will be solved. German socialism must and will solve them, and on an even higher plane than Marx's; for "socialism begins where Marxism ends" (pp. 75, 76).

V

Socialism must be the foundation of the Third Empire (p. 76). This Empire, the "new and final" one of the "great trinity of empires" (p. 200), is to regain for the German nation the greatness it possessed during the First Empire but lacked during the Second. Is

it also to restore the territory of the First Empire? Moeller gives no direct hint. Austria, of course, must be part of it, and from Moeller's proposed solution of Germany's population question it appears safe to assume that the new Empire is meant to be larger than the "mutilated" Germany of Versailles.

As the Third Empire "exists as yet only in our dreams" (p. 200), Moeller had nothing to say about the concrete form it would take; the whole concept, he admitted, is "misty, indeterminate, charged with feeling; not of this world but of the next" (p. 14). He is certain, however, that, if it is to last, the Empire must be different from its two predecessors, for it would be reactionary to advocate copying the past instead of merely preserving its tradition.

Despite her long monarchical past, the new Germany may well be a republic for the next thousand years; at least, the new Empire may start as a republic,<sup>19</sup> since a monarchy cannot be simply set up at will but must be won (p. 227). Of course, it is not to be a democratic, parliamentary republic, and the "participation" in the new Empire, on which Moeller insists for all groups of the nation, including the proletariat, will not be the old-fashioned kind by means of ballots, but a participation in spirit through the medium of national values shared by all. The new technique remains as obscure as the values themselves and the method of their determination, but the consciousness of these values will be imparted from above and is expected to be readily accepted from below (pp. 248, 249).

The presence of strong leadership, complemented by willingness on the part of the masses to admit their own inability to lead themselves, thus stands out as a requirement for the coming of the Third Empire. Moeller expressly denies the proletarian masses the right and the ability to bring about socialism as Marx had predicted (p. 165). Nor are any of the political parties whose programs Moeller so severely criticized suited for the task. Rather, a Third Party must arise to accomplish it, a party opposed to parties in the old sense, an anti-party (as Hitler's "movement" later claimed to be). It must include "all who wish to see Germany preserved for the German people" (p. 242) instead of for a special group or class. Its

<sup>19</sup> The inadequacy of "empire" for the German term "*Reich*" is evident, for *Reich* does not imply an emperor but may indicate a republic, while on the other hand it denotes more than merely a territory and, to Moeller, has an almost mystical content.

members must be inspired by nationalism and the determination to preserve all that in Germany is worth preserving (p. 243) for the sake of Germany's exclusive task in the world, namely, to maintain the equilibrium of Europe as Austria, Prussia, and the Bismarckian Empire had in turn formerly done (p. 244). The men of the Third Party must be moved by the principles of true conservatism: they must reject evolution and progress as liberalist concepts and believe instead that growth and creation occur, in history as in nature, with organic continuity and in harmony with tradition (pp. 202, 203). They must refuse to be guided by rationalism which has deteriorated into "mere intellectual calculation" and under whose influence mankind has lost hold of moral values (p. 213). Their guide must be more than reason; it must be understanding, which is "spiritual instinct," compatible with emotion but not with reason (pp. 211, 212).

It is from these men, to whom the unity of the nation stands above all else, that leadership must come. It must not be leadership which is claimed as a matter of privilege, as under the monarchy.<sup>20</sup> Nor can it be leadership claimed on the strength of membership in that German party which calls itself conservative. For its conservatism has been merely nominal, spurious, without true spiritual content, ever since it preferred the leadership of Metternich and the Holy Alliance to that of Wilhelm von Humboldt and the Freiherr vom Stein; its liberalized leadership, together with a "liberal" monarch, met bankruptcy in 1918.<sup>21</sup> The Third Empire must have leadership based alone on confidence and merit (p. 228). The true conservative, so Moeller informs us, possesses the quality of leadership as an inborn gift coming to him from the "inherited knowledge" of historical relationships which he has "in his blood" (p. 232).

No program of action is outlined in the book to guide the leadership in the realization of the Third Empire. It can only be hoped that the conservative leaders will be quantitatively and qualitatively adequate to chart the road to the new Germany, and that they will find enough "men with true, simple, straightforward insight, with strong, virile, primitive passions, and the will to act

<sup>20</sup> Moeller credited the Revolution of 1918 with having rendered true leadership possible by sweeping away the monarchy.

<sup>21</sup> Moeller, it appears, is more charitable in his judgment of conservatism than of liberalism. He does not reject the *principle* of conservatism when he censures those who passed as its representatives, as he does in the case of liberalism.

accordingly" (p. 241), who will readily follow their lead. The immediate task, closely linked with that of building German socialism, is to forge Germany again into a nation, i.e., into a community not merely of soil and speech but of living values that are recognized and shared by all its members and defended, as the nation's "most characteristic and precious possessions," against the hostility of other nations determined to further their own values (pp. 245, 261).<sup>22</sup>

The value-consciousness (or nationalism) of the German people had been at its height during the First Empire, when the German nation had believed itself "privileged to represent the Christian and imperial ideals of the West" (p. 246). But in later centuries that nationalism had gradually degenerated into a mere formal patriotism focused upon the state-for-the-sake-of-the-state and upon its pillars, throne, and altar, so that it was in danger of dying out when that state crumbled in 1918 (pp. 246, 247). "The conservative recognizes that human life maintains itself in nations" (p. 224), that is, in communities held together by common values. The nation thus being the main reality to him, he is duty-bound to save German culture and civilization, i.e., German values, from destruction in order to insure the German people's survival as a nation (pp. 248, 249).

Just what those values are, Moeller does not disclose. They are, among other things, "mysterious" as in no other country; "fragmentary and yet complete"; "utterly realistic or entirely space-defying;" "to all appearance, the expression of irreconcilables and incompatibles;" but "closely and fatefully bound up with the history of the nation" (p. 249). Due to the confusion and the many strands in the course of that history, Moeller admits, these values are not easily recognized. Therefore, "it will be the task of the new nationalism . . . to display clearly to the nation the inheritance which belongs to her, because it is German and because it is of value: German human history" (p. 261). Already in 1922 Moeller recognized hopeful signs of a nation-consciousness developing again among the Germans.<sup>23</sup> Tribal, religious, and other antitheses

<sup>22</sup> The similarity with Nietzsche-Zarathustra's advice that "no people could live without first valuing; if a people will maintain itself, however, it must not value as its neighbor valueth," is evident.

<sup>23</sup> Such nation-consciousness did appear in the 1920's in German political groups, especially on the Right and among the younger generation. It even reached,

of long standing seemed to him, not to disappear, but to lose their separating effect among the German people whom the defeat of 1918 appeared to have drawn closer together. There must be room in Germany for Bavarians and Prussians, for Protestants and Catholics, Moeller pleaded; "we must have the strength . . . to recognize and reconcile all the antitheses which are historically alive amongst us" (p. 254).

## VI

The book concludes in a grandiose if mystical mood. In forging together the German nation as one single will directed against the West and building a system of German socialism, Moeller points out, the conservative-revolutionary German nationalism is not fighting for the sake of Germany alone. It is fighting for the cause of Europe as well; not for the cause of the Europe of today, "which is too contemptible to have any value," but "the Europe of Yesterday and whatever thereof may be salvaged for Tomorrow" (p. 264). For German nationalism has a mission, a "peculiar prerogative for which other peoples vie" with it: it is "the champion of the Final Empire—ever promised, never fulfilled" (p. 263).<sup>24</sup> The Final Empire, a reorganized Europe, the New Order: we still hear the promise today.

Other nations have wanted empires of their own, "a sphere and empire of Latin, or Anglo-Saxon, or Pan-Slav thought." And the victors of the War have used fine words to ascribe a world mission to themselves. But their efforts, both to annihilate the German Empire and to sponsor their own, must fail, for theirs is a sinking civilization. "There is only *one empire*, as there is only *one church*"; it is *the Empire* for which German nationalism is fighting (p. 263).

By what rights, one might justly ask, does the German nation hold an exclusive claim on "the possible Empire"? And on what grounds has it exclusively been appointed to the "task to be guard-

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in a milder form, over to the Left, notably the "Young-Socialists" and the groups led by the late Professor Hermann Heller. The overwhelming majority of the Socialists and Communists, remembering what they had been taught about nations and internationalism and how they had been treated as outsiders before 1918, remained strictly class-conscious and aloof, however, and looked upon such demonstrations as showing the national colors or singing the national anthem as breaches of proletarian etiquette.

<sup>24</sup> The Empire may not even be expected ever to be fulfilled, as "men set themselves only such tasks as they cannot fulfill" (p. 39). Its main function seems to be that of a myth.

ian on the threshold of values" and to protect Europe against "the ape and the tiger in man" and against "the shadow of Africa" (p. 264)? Destiny, Moeller replies. "To live not for ourselves only, but for mankind, to erect an immortal memorial of our existence, . . . this has been the innermost meaning of all German achievements throughout our history—as it has been the ambition that has fired all great peoples at all times" (pp. 256–257). But might not other peoples likewise be moved by the ambition to live for mankind? Here the World Plan, with its law favoring the rise of "young" nations, as Moeller had written earlier, comes to the rescue of Germany. The turn of the "young" nations is approaching, and Germany, being the custodian of an old culture as well as the bringer of new forms, is at once an "old" and a "young" nation, and thus entitled to claim the leadership of Europe's "young" nations.<sup>25</sup> Still another factor works in favor of Germany's leadership: her central position in Europe. One way for Nature to express her will in history is through the shifting of nations, in accordance with the World Plan. The present direction of the shifting in Europe is from West to East, away from the Western European powers toward the center.<sup>26</sup> "The center is the creative focus of our hemisphere," Moeller reiterated his belief in 1922 (p. 244), even though the War appeared to have vetoed it. "Germany's position is a central one. She is the focus of all political, economic, and intellectual problems. If the world wants salvation, and so far as it deserves salvation, Germany will be able to express whatever this revolutionized world can hope to salvage" (p. 192). Pray "that the degenerate European world will allow itself to be set in order once again by this country and this people"! (p. 241).

## VII

Thus in circumstances not unlike those in which Fichte, over a hundred years previously, had issued his *Addresses to the German Nation*, Moeller directed his appeal to the Germans, pleading with them to stand together despite all political, economic, or religious differences and erect a new and glorious if somewhat vague Empire destined to lead the "war against the West." The response was dis-

<sup>25</sup> *Deutsche Rundschau*, Nov., 1918, p. 233.

<sup>26</sup> *Ibid.*, Nov., 1916, pp. 165, 167. The end of the European leadership of France and England, and the prevalence of the ideas they represent, thus appears doubly certain.



appointing, although Moeller should have expected a cool reception, having stepped on the toes of every political party from Right to Left. Except for some small groups of nationalist youth, the German people, if they heard his message at all, chose to reject or ignore it, and were not moved into action until another apostle came with not only a message but also a clever technique of making it heard. When Moeller died, in 1925, by his own hand—whether in despair over Germany's fate or from fear of threatening mental derangement, is not definitely established—his passing was hardly noticed beyond the select circle of his fellow-conservatives. His plea for a second, anti-liberal revolution, however, found an echo and was carried on among radical intellectuals of the Right, as the literature after 1925 shows.<sup>27</sup>

A reading of *Das Dritte Reich* and *Mein Kampf* shows numerous parallels in the thought of the two books' authors. What, if any, influence did Moeller have on Hitler? Fechter reports<sup>28</sup> that the two men once met in the *Juniklub*, in 1921 or 1922, and had a long talk. What they discussed, what they thought of each other and of the other's ideas, whether they felt jealous of one another, we do not know. Neither mentions the other in his book, and since Hitler acknowledges very few ideas that he has adopted from some one else, we do not know whether the younger man was influenced by the older or whether, perhaps, both drew independently upon the same sources. It is therefore possible here only to show briefly some of the similarities and differences in their concepts, keeping in mind that one man was an intellectual and the other a leader of the masses, a "drummer."

Their basic attitudes are quite similar: both are irrationalists, with a good dose of mysticism, and not disposed to think much of the findings of unbiased investigation as the basis or corrective of man's opinions. Both reject materialism and belittle the historic influence of economic and social factors, just as they deny that the proletariat—for whose political support they are bidding—is primarily a social category and that socialism is basically centered about an economic theme. They are equally vague about form and content of their socialist Empire, realizing no doubt that its value

<sup>27</sup> E.g., Ferdinand Fried, Hans Zehrer, and others in the *Tat-Kreis*, a group of radicals of the Right speaking through the magazine *Die Tat*; or Hans Freyer in his book *Die Revolution von Rechts* (Jena, 1931). Numerous other examples can be found in Kolnai, *op. cit.* <sup>28</sup> *Deutsche Rundschau*, Apr., 1934.

as a myth decreases as the clarity of the concept increases. Their hostile—and superficial—views on liberalism, democracy, and Marxism coincide, as do their caustic criticisms of the World War and the Peace Treaty, of the Revolution of 1918 and the Weimar Republic. Only Hitler's are saltier and more vituperative than Moeller's and add a variation by connecting the Jews not only with Marxism but also with liberalism, and by blaming the decline of Germany after Bismarck more specifically on Jewish influence than merely on a general spiritual exhaustion of the Germans. The same general agreement can be noticed concerning most basic points of their positive programs: the new "organic" system of democracy, with leadership by an élite; an aggressive population policy culminating in expansion; a cultural mission for Germany in Europe.

While both men place great store in the nation as the medium for overcoming social and other differences through its demand of ultimate loyalty, they differ as to who is to be included. Moeller, although denying Jews the right of leadership, seems to hold membership in the Third Empire open to all who could subscribe to its by-laws. Hitler, on the contrary, rejects some portions of the German population from the outset, irrespective of their declared willingness to be loyal members, on the ground that they are inherently incapable of sharing the sentiments of German nationalism and of showing a selfless attitude. He builds the new Germany upon a *biological* racial purity as defined by his racial scientists, while Moeller requires a *spiritual* racial purity (in the sense of Prussian traditions). To Moeller, the promotion of the Empire seems to be mainly a function of the teacher of the new attitude, while to Hitler it is a job not only for the Minister of Public Enlightenment and Propaganda, but likewise for the inquisitor, the hangman, and the office in charge of eradicating the internal enemy by racial laws and anti-Jewish pogroms.

Concerning Germany's external enemy, there is likewise a slight difference between the two authors. While both agree in their hostility to the West, Moeller not only felt a certain kinship between Germany and Russia, between Right and Left radicalism, but also looked favorably upon collaboration with Russia (as advocated by Count Brockdorff-Rantzau, the German Republic's first ambassador to Russia) as a means of strengthening Germany's hand in the West. And in the matter of Russian territories as outlets for Ger-

many's over-population, *Das Dritte Reich* was less outspoken than *Mein Kampf*.

The points of difference, however, are outnumbered by the points on which both men were agreed, so that we might conclude that Moeller, were he alive, would hail the Nazi régime as the incarnation of his vision, or at least as a step in the right direction. Also he would see in the Nazi party that Third Party of all revolutionary-conservative nationalist Germans which was to bring about the Final Empire. For the multiplicity of parties has ceased; the masses have only the one party to represent them, lead them with a firm hand, and relieve them of the bewildering task of choosing among many lists of candidates at election time.

But on looking more closely, might Moeller perhaps feel some doubt about how genuine that outward unity of the German nation really is? Might he feel that a unity brought about by governmental decree, simply by declaring disunity illegal and punishable, is not quite what he had in mind when he wrote that the conservative accomplishes his ends, not by force (as the revolutionary and the reactionary do) but by "power emanating from a constructive idea" (p. 194)? Or might he even feel somewhat the same about the Nazi régime as he had felt in 1922 about Italian Fascism, which, he wrote, has "formulated a few powerful rhetorical maxims . . . and enforced them by a reign of terror" (p. 191)?

## RURAL LOCAL GOVERNMENT

**County and Township Government in 1940.\*** In times of national or international stress, public attention tends to become focused upon spectacular events transpiring in the nation's capital or chief cities, with little interest displayed in the more prosaic affairs of rural local government. As a consequence, normal progress in rural institutions and activities is likely to be retarded. During 1940, with but few state legislatures in session and popular interest diverted to other fields, little that was distinctly novel occurred in the field of American county and township government. The rural units seemed, in a sense, to be marking time while the national government, and, to a lesser degree, states and cities, concentrated upon various phases of the national defense program. Yet certain developments took place during the year which, if not extraordinary, were nevertheless significant. As in former years,<sup>1</sup> events will be summarized under the following headings: (1) areas; (2) organization and personnel; (3) functions; (4) finance; (5) optional charters; and (6) intergovernmental relations.

### I. AREAS

Interest in county consolidation, and in city-county consolidation or separation, was displayed during the year in several localities, although little was actually accomplished in the direction of areal readjustment. A movement to consolidate the three counties of San Francisco, Marin, and San Mateo in California was defeated, or at least delayed, by a ruling of the attorney for the city of San Francisco to the effect that inclusion of Marin county in the merger would require constitutional amendment. In Tennessee, the governing bodies of Davidson county and the city of Nashville were reported to be considering a proposal to consolidate those units of government. Over the opposition of county authorities, the city of Richmond, Virginia, annexed some eight square miles of the territory of Henrico county, including approximately 15,000 inhabitants and 45 per cent of the county's assessed valuation. Under that state's unique system of city-county separation, manager-governed Henrico county will thus lose completely this substantial portion of its inhabitants and taxable property. The Virginia general assembly empowered certain counties to consolidate with adjacent cities by joint agreement of the governing bodies of the units concerned, followed by approval of the voters at a general election. The local governing bodies are authorized to negotiate a consolidation agreement either upon their own initiative or upon popular

\* The writer is indebted to Mr. Joseph Deutsch and Mr. Harold R. Cohen, University of Illinois students employed on N.Y.A. funds, for assistance in collecting the materials used in the preparation of this summary.

<sup>1</sup> See this REVIEW, Vol. 31, pp. 884-913; Vol. 32, pp. 936-956; Vol. 33, pp. 1058-1072; Vol. 34, pp. 1145-1166.

petition.<sup>2</sup> Although the general trend was in the direction of facilitating consolidation, a step in the opposite direction was taken in Nevada. There the voters, in the general election, ratified a constitutional amendment prohibiting the legislature from abolishing any county unless such abolition be first approved by the voters of the county affected.<sup>3</sup>

Outstanding among the year's activities relative to the formation of new units of local government were those concerning soil conservation districts. Kentucky and New York enacted soil conservation district enabling acts, the New York statute being of particular interest in that it prescribes the county unit as the basis for district organization.<sup>4</sup> By August 15, 1941, 42 states had enacted soil conservation district enabling legislation, and 588 soil conservation districts, embracing approximately 348,958,484 acres, had been established in 38 states.<sup>5</sup>

## II. ORGANIZATION AND PERSONNEL

*New Offices.* New county offices created during the year were not numerous. Kentucky authorized the appointment of an auditor and an assistant auditor in counties containing first-class cities (i.e., Jefferson county); and the appointment, upon request by the sheriff and the county tax commissioner, of a collector of dog licenses in counties containing second-class cities. The same state provided for the creation of county housing commissions in counties which operate housing projects. Various South Carolina counties were provided, by special acts, with a game and fish commission, county board of health, or county forest fire control organization. Virginia, by special statutes, authorized or established in particular counties a county police force, a county fire department, or a general county registrar (of voters) to replace registrars in the several election districts of the county.<sup>6</sup>

*Office Consolidation and Abolition.* In New York City, efforts were renewed to abolish the offices of sheriff and register in the several counties within the city and to replace those officials with one sheriff and one

<sup>2</sup> *Acts of Virginia*, 1940, ch. 395; note in *Public Management*, Vol. 22, p. 58 (Feb., 1940); Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, pp. 130, 334, 756 (Feb., May, Nov., 1940).

<sup>3</sup> Letter to the writer from Malcolm McEachin, secretary of state of Nevada, Carson City, Sept. 29, 1941. The proposed amendment was given first legislative approval in 1937 and second such approval in 1939.

<sup>4</sup> *Acts of Kentucky*, 1940, ch. 8; *Laws of New York*, 1940, ch. 727; Kenneth Wernimont, "State Rural Land-Use Legislation in 1940," *Journal of Land and Public Utility Economics*, Vol. 17, pp. 103-108 (Feb., 1941).

<sup>5</sup> Data supplied by Soil Conservation Service, U. S. Department of Agriculture. See *infra*, "Federal-Local Relations."

<sup>6</sup> *Acts of Kentucky*, 1940, chs. 23, 132, 135; *Acts and Joint Resolutions of South Carolina*, 1940, pp. 1715, 1777, 1801, 1850, 1912, 2315; *Acts of Virginia*, 1940, chs. 2, 225, 348.

register, appointed by the mayor and serving the entire city. As in the preceding year, however, these efforts failed because of a court ruling invalidating petitions which would have initiated the necessary charter amendments.<sup>7</sup> Kentucky continued to manifest interest in possible consolidation of the offices of sheriff and jailer, a bill to accomplish that purpose being considered by the general assembly, but failing of passage.<sup>8</sup> The voters of West Virginia, in the November election, defeated a proposed constitutional amendment designed to abolish the office of justice of the peace and establish instead "summary courts" having county-wide jurisdiction.<sup>9</sup>

*County and Town Executives.* Several counties and towns displayed interest in the manager form of government, with more actual progress in adoption being made at the town than at the county level. Proposals for adoption of the manager plan were rejected by the voters of Onondaga county, New York, and Fairfax county, Virginia. The proposed charter for Onondaga county had been drafted by a charter commission appointed by the board of supervisors, after a more sweeping manager proposal had been defeated by popular vote in 1939, and after a special act to provide the county with a limited manager plan had been passed by the legislature early in 1940 but killed by gubernatorial veto. Fairfax county rejected the optional "county executive" plan of government provided by Virginia statutes, after defeating a special "county board" form of organization made available to that county by the 1940 session of the state legislature.<sup>10</sup> Adoption of manager government by Nebraska counties was again thwarted when the voters of the state defeated a proposed constitutional amendment which would have empowered the legislature to provide the manager plan as an optional form of government.<sup>11</sup> San Mateo county, California, which in 1938 made the office of county executive elective but in 1939 defeated a proposal to abolish the office entirely, in 1940 defeated a proposal to return to the appointive basis. Notwithstanding these adversities, interest in possible adoption of the manager plan

<sup>7</sup> Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, pp. 426, 756 (June, Nov., 1940). See this REVIEW, Vol. 34, pp. 1149-1150.

<sup>8</sup> Elwyn A. Mauck, note in *National Municipal Review*, Vol. 29, p. 132 (Feb., 1940). An act providing for consolidation of these offices was passed in 1934, but was subsequently repealed before becoming effective.

<sup>9</sup> Letter to the writer from William S. O'Brien, secretary of state of West Virginia, Charleston, July 28, 1941.

<sup>10</sup> *Acts of Virginia*, 1940, ch. 396; Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, pp. 209, 498-499 (Mar., July, 1940), Vol. 30, p. 54 (Jan., 1941); Marguerite J. Fisher, note in *ibid.*, Vol. 29, p. 819 (Dec., 1940). See *infra*, "Optional Charters."

<sup>11</sup> Elwyn A. Mauck, note in *National Municipal Review*, Vol. 29, p. 755 (Nov., 1940); W. L. Pierpont, note in *ibid.*, Vol. 30, pp. 52-53 (Jan., 1941). See this REVIEW, Vol. 34, p. 1150.

was evidenced in several other counties, including Los Angeles, Sonoma, and Ventura in California, and Guilford in North Carolina.<sup>12</sup>

Substantial progress in the manager movement was made among the towns of New England. Manager charters were adopted by action of the town meeting in the towns of Bridgton, Hodgdon, Lincoln, Linneus, and Norridgewock in Maine; Hartford and Randolph in Vermont; and Bloomfield in Connecticut. The annual meeting of the Maine town of Millinocket voted to draft a manager charter for submission at a special election. In the town of Brookline, Massachusetts, a governmental survey resulted in a recommendation that the manager plan be adopted. The town of Jay, Maine, adopted the manager plan, but rescinded this action at a subsequent town meeting before a manager had been appointed.<sup>13</sup>

In Pennsylvania, Harrison township in Allegheny county was reported to have experienced a highly successful first year under the township manager plan of government.<sup>14</sup>

*Personnel Administration.* Three counties—Santa Clara and San Mateo in California, and Atlantic in New Jersey—provided by popular vote for inauguration of the merit system, bringing to 176 the total number of American counties operating under the merit system by the end of 1940. Also displaying interest in civil service reform was Fulton county, Georgia, where the Atlanta Local Government Commission recommended adoption of the merit system for the county.<sup>15</sup>

Louisiana enacted statutes, applicable to parishes and other local units as well as to the state government, which were designed to curtail particular abuses in public personnel administration. One of these places restrictions upon additions to personnel, or expansion of payrolls or expenditures, during the months immediately preceding a gubernatorial election; while another makes it a penal offense for any person to permit his name to be carried on the payroll of any governmental unit with intent to defraud, or to receive compensation for services not actually rendered by himself, or to receive compensation grossly in excess of the value of services rendered.<sup>16</sup>

Certain developments during the year serve as reminders of the in-

<sup>12</sup> Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, pp. 268, 427 499–500, 622, 818 (Apr., June, July, Sept., Dec., 1940).

<sup>13</sup> Note in *Public Management*, Vol. 22, pp. 116–117 (Apr., 1940); John Iglauer, "Council-Manager Government," *Municipal Year Book*, 1941, pp. 248–252; H. M. Olmsted, note in *National Municipal Review*, Vol. 29, p. 709 (Nov., 1940).

<sup>14</sup> C. A. Grove, "Township Manager Plan of Government," *American City*, Vol. 56, No. 4, pp. 87, 89 (Apr., 1941).

<sup>15</sup> James M. Mitchell, "Personnel Developments in 1940," *Municipal Year Book*, 1941, pp. 111–115; Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, p. 818 (Dec., 1940), Vol. 30, p. 119 (Feb., 1941); H. M. Olmsted, note in *ibid.*, Vol. 30, p. 108 (Feb., 1941). <sup>16</sup> *Acts of Louisiana*, 1940 (reg. sess.), nos. 9, 63.

creasing importance of labor unions among county employees, and of professional organizations among county officers. The county commissioners of Carbon county, Utah, entered into a contract with the State, County, and Municipal Workers of America (C. I. O. affiliate) providing for "check off" of union dues. Henceforth, dues will be deducted by county officials from the salaries of county employees. The contract also constitutes the union the sole collective bargaining agency of the employees and guarantees a union shop. In Pennsylvania, the state association of county commissioners voted at its annual convention to inaugurate publication of a bimonthly magazine to be known as *The County Commissioner*.<sup>17</sup>

An encouraging development which is beginning to make headway in the field of local personnel administration involves joint performance of personnel functions by two or more local governmental units, or the performance of such functions for various local agencies by other local units or by the state. Especially noteworthy is the arrangement whereby the civil service commission of Los Angeles county, California, performs civil service work for numerous local units within the county.<sup>18</sup>

Civil service reform in Wisconsin counties may be retarded by a decision of the circuit court of Dane county invalidating a statute of 1939 which authorized the establishment of the merit system by initiative and referendum. The court held that the act was an unconstitutional attempt to delegate legislative authority to the county voters.<sup>19</sup>

The 1940 amendment to the Hatch Act<sup>20</sup> will operate to place legal restrictions upon the political activities of those county and township officers and employees whose principal employment is in connection with any activity financed wholly or in part from federal funds. The impact of this legislation should be felt particularly in county welfare departments administering old-age assistance and other federal-aid welfare services.

### III. FUNCTIONS

*New Functions.* There were a few instances in which state legislatures conferred additional powers upon local governments. Kentucky and Louisiana authorized the creation of housing authorities by counties and parishes, respectively. The Kentucky statute provides that any county may establish a county housing authority (commission) or join with one or more other counties in establishing a regional authority; while the Louisiana act creates parish authorities in parishes having more than

<sup>17</sup> Note in *Public Management*, Vol. 22, p. 152 (May, 1940); Elwyn A. Mauck, note in *National Municipal Review*, Vol. 29, p. 756 (Nov., 1940).

<sup>18</sup> See *infra*, "Functional Consolidation."

<sup>19</sup> Elwyn A. Mauck, note in *National Municipal Review*, Vol. 29, p. 427 (June, 1940). Civil service systems may still be established in Wisconsin counties by action of the respective county boards.

<sup>20</sup> 54 Stat. at L. 767.



55,000 inhabitants, and empowers two or more parishes, regardless of population, to establish regional authorities. As of June 30, 1940, 191 county housing authorities were reported to be in existence in 14 states, Georgia leading the way with an even hundred. Only a few of these, however, were well under way with housing programs.<sup>21</sup>

Virginia counties were authorized to enter into agreements with federal agencies for the acquisition and housing of relics, paintings, carvings, sculpture, and other works of art, and to expend general county funds therefor. Various counties in the same state were empowered to provide water supply systems, fire departments, or police forces. Certain South Carolina counties were authorized by special acts to protect forest lands and promote reforestation, and to regulate the collection and disposal of garbage. An unusual power conferred upon Illinois counties is that of constructing and operating coal processing plants for the treatment of coal to render it smokeless when consumed.<sup>22</sup> The Illinois law was designed to foster the coal mining industry in the southern counties of the state, particularly by enabling those communities to preserve their share in the St. Louis market by producing coal which will meet the requirements of that city's new smoke ordinance.

*County Zoning.* Zoning ordinances were adopted during the year by two counties—Cook (Chicago) in Illinois and Marathon in Wisconsin. The Cook county ordinance, which displaced interim regulations of a temporary nature, is a comprehensive measure applicable to all parts of the county outside cities, villages, and incorporated towns. Since the county is highly urbanized, the ordinance is devised to meet problems of urban and suburban, rather than purely rural, development. In appraisal of the ordinance, it has been said: "The Cook county zoning ordinance contains within itself potentialities of great public and private benefit. It provides for the intelligent subdivision of land, puts a check on wildcat home building, which creates the rural slums of the future, gives protection against automobile 'graveyards,' dumps, unregulated use of billboards, and other nuisances, reduces or eliminates congestion, safeguards health, and keeps business within limits where it can best serve the community. The ordinance should help families moving outward to establish their homes without fear of depreciation caused by crowding or the encroachment of detrimental building."<sup>23</sup> Although Marathon county is predominantly rural,

<sup>21</sup> *Acts of Kentucky*, 1940, ch. 23; *Acts of Louisiana*, 1940 (reg. sess.), no. 208; *First Annual Report of the Federal Works Agency* (1940), pp. 341-344. See *infra*, "Federal-Local Relations."

<sup>22</sup> *Illinois Revised Statutes*, 1941, ch. 93, secs. 157-161; *Acts and Joint Resolutions of South Carolina*, 1940, pp. 1715, 1766, 1912, 2315; *Acts of Virginia*, 1940, chs. 2, 23, 141, 270, 348.

<sup>23</sup> Arthur G. Erdmann, "The Rural Zoning Ordinance of Cook County," *Journal of Land and Public Utility Economics*, Vol. 16, pp. 438-442, 440 (Nov., 1940).

its ordinance represents a combination of the regulations employed in Wisconsin's cut-over regions and those used in highly urbanized communities. By late 1940, the ordinance had been approved by the town boards of eight towns in the county.<sup>24</sup>

*Functional Consolidation.* Recent progress in functional consolidation has been most conspicuous in metropolitan regions, where indeed devices of intergovernmental coöperation offer greatest potential advantage. In Milwaukee county, Wisconsin, a plan has been inaugurated whereby the county, the city of Milwaukee, the school board, and several other local agencies coöperate in the purchase of various supplies. Hamilton county, Ohio, has for several years purchased coöperatively with the city of Cincinnati, the public library, the University of Cincinnati, and the city school district. The department of purchase of New York City serves the five counties within Greater New York. The purchasing and stores department of Los Angeles county, California, is reported to be functioning as the procurement agency of more than 200 jurisdictions—school districts, a flood control district, and improvement districts of various types—outside the regular county institutions.<sup>25</sup>

Another field in which functional consolidation is rapidly expanding in the Los Angeles area is that of personnel administration. The civil service commission of Los Angeles county, which in 1936 served only two cities, was reported at the end of 1940 to be performing civil service work, under contractual agreements, for ten cities as well as for the flood-control district and the fire-protection districts within the county. Between 1936 and 1940, the county received more than \$6,000 from these various units for examinations and personnel services administered. The county contracts are of standard form, with prescribed fees for work on classification systems, compensation plans, preparation and conduct of examinations, and other services.<sup>26</sup>

The five neighboring Michigan counties of Livingston, Macomb, Oakland, Washtenaw, and Wayne joined in the establishment of the Huron-Clinton metropolitan authority for the purpose of constructing and maintaining parks and parkways. Creation of this special authority had been authorized by the Michigan legislature in 1939, and in the November election of 1940 the project was approved by the voters of each of the

<sup>24</sup> J. M. Albers, "Progress in County Zoning: Marathon County, Wisconsin," *ibid.*, pp. 393-402. By the terms of the Wisconsin enabling act, a county zoning ordinance is effective only in those towns which approve the ordinance by action of their respective town boards.

<sup>25</sup> Joseph W. Nicholson, *County Purchasing* (Nat. Assoc. of Purchasing Agents, New York, 1940), ch. 2; Paul Beckett, "Public Purchasing Methods in Los Angeles County and City," *The Tax Digest*, Vol. 19, pp. 196-197, 211-214 (June, 1941).

<sup>26</sup> Frank M. Stewart and Ronald M. Ketcham, "Intergovernmental Contracts in California," *Public Administration Review*, Vol. 1, pp. 242-248 (Spring, 1941).

counties concerned.<sup>27</sup> The Virginia legislature, in empowering Chesterfield county to construct and operate a water supply system, authorized the county to furnish water to any sanitary district, village, town, or community, as well as to individuals.<sup>28</sup>

General legislation in the field of functional consolidation included statutes authorizing the establishment of regional housing authorities by two or more counties in Kentucky and South Carolina, and by two or more Louisiana parishes. Kentucky provided also that two or more counties may contract for the establishment of a joint library system. Eleven adjoining counties in southwest Georgia afford an interesting example of interlocal coöperation closely akin to the devices usually classed as involving functional consolidation. The respective housing authorities of those counties have entered into an agreement whereby each authority will appoint one member of a general executive committee, which committee in turn will appoint a single executive director to serve the eleven counties. The county authorities will not lose their individual indentities, but will be thus served by a common director, to whom the general executive committee will act as an advisory board.<sup>29</sup>

#### IV. FINANCE

Significant developments during the year in county and township finance were not numerous. Polk county (Des Moines), Iowa, was reported to have acquired numerous parcels of land during recent years under an amended tax-title law which authorizes counties to take title to tax-delinquent property. Some of the parcels taken over by the county are being used for various public purposes, while several hundred others have been sold at a substantial profit.<sup>30</sup>

In the field of purchasing, mention may be made of the fact that a majority of Alabama's counties are making county purchases through the state division of purchases and stores, with resulting savings in costs which have been estimated at from 18 to 22 per cent.<sup>31</sup> Approximately 75 American counties were reported, as of 1940, to be practicing centralized purchasing; while several metropolitan counties were effecting savings by purchasing coöperatively with cities and other local units.<sup>32</sup>

<sup>27</sup> Data supplied by Harry F. Kelly, secretary of state of Michigan. See this REVIEW, Vol. 34, pp. 1158-1159. <sup>28</sup> *Acts of Virginia*, 1940, ch. 141.

<sup>29</sup> *Acts of Kentucky*, 1940, chs. 23, 57; *Acts of Louisiana*, 1940 (reg. sess.), no. 208; *Acts and Joint Resolutions of South Carolina*, 1940, p. 1687; Elwyn A. Mauck, note in *National Municipal Review*, Vol. 30, p. 120 (Feb., 1941).

<sup>30</sup> Wade S. Smith, note in *National Municipal Review*, Vol. 29, p. 627 (Sept., 1940). Cf. note in *Public Management*, Vol. 22, p. 344 (Nov., 1940).

<sup>31</sup> See Weldon Cooper, note in *National Municipal Review*, Vol. 29, p. 333 (May, 1940); *infra*, "State-Local Relations."

<sup>32</sup> Joseph W. Nicholson, *op. cit.*, ch. 2. See *supra*, "Functional Consolidation."

Kentucky, apparently as a means of circumventing constitutional debt limitations, empowered counties to lease bridges from non-profit corporations, at the same time authorizing the organization of such corporations to erect bridges for lease to counties. Any such corporation is authorized to issue interest-bearing bonds to acquire funds for bridge construction; and the act stipulates that, when the bonds so issued shall have been retired from rentals paid by the county, title to the bridge property shall immediately vest in the county.<sup>33</sup> While extending the life of the Municipal Debt Readjustment Act to 1942, Congress amended the measure to make its provisions available to counties and parishes, and to special assessment districts.<sup>34</sup>

#### V. OPTIONAL CHARTERS

Optional forms of county government constituted a subject of legislative and popular action in New York and Virginia. The New York legislature amended the Fearon-Parsons optional-charter law of 1936 to make its provisions conform to requirements of the new state constitution. Hereafter, the adoption of an optional form of county government under the statute will not necessitate approval by the voters of municipal corporations within the county, in addition to approval by the county as a whole, unless a transfer of functions to or from such municipalities is involved.<sup>35</sup> In Onondaga county, New York, a charter was drafted under provisions of the Buckley-Reoux law of 1937,<sup>36</sup> but was defeated by the voters in the November election. Madison county was also reported to be considering the adoption of one of the several alternative plans of government offered by New York statutes.<sup>37</sup>

The Virginia legislature offered to Fairfax county an optional "county board" form of government, under which the board of supervisors would include one member elected at large, in addition to members chosen from magisterial districts, and would appoint an executive secretary who would prepare the annual budget and perform various functions of a supervisory or managerial nature. This optional form of organization was not, however, adopted by the county voters.<sup>38</sup>

<sup>33</sup> *Acts of Kentucky*, 1940, ch. 44. The Kentucky courts had already placed the stamp of judicial approval upon use by counties of the "lease with option to purchase." See this REVIEW, Vol. 32, p. 950. The 1940 statute expired by limitation on January 1, 1941. <sup>34</sup> 54 *Stat. at L.* 667. See *infra*, "Federal-Local Relations."

<sup>35</sup> *Laws of New York*, 1940, ch. 638. See this REVIEW, Vol. 31, p. 908; Vol. 33, pp. 1068-1069. <sup>36</sup> See this REVIEW, Vol. 32, p. 952.

<sup>37</sup> Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 29, pp. 499, 621-622 (July, Sept., 1940); Marguerite J. Fisher, note in *ibid.*, p. 819 (Dec., 1940). See *supra*, "County and Town Executives."

<sup>38</sup> *Acts of Virginia*, 1940, ch. 396. See *supra*, "County and Town Executives."

## VI. INTERGOVERNMENTAL RELATIONS

*State-Local Relations.* Developments in the field of state-local relations were for the most part directed toward state assistance to local units rather than toward mandatory state control. In Alabama, 34 of the state's 67 counties regularly purchased supplies through the state division of purchases and stores; the state agency being required to make its purchasing facilities available, upon request, to counties and municipalities. Other states reported as having statutes which permit counties to make purchases through their respective state purchasing offices were Michigan, New Hampshire, Pennsylvania, Virginia, West Virginia, and Wisconsin. Very few counties, however, seem to be taking advantage of this opportunity.<sup>39</sup>

Virginia enacted legislation authorizing the state highway commission to lend or rent road-building equipment to cities, towns, counties, or school districts upon such terms as may be agreed upon by the state agency and the local unit concerned. No Maine municipality was placed under the supervision of that state's emergency municipal finance board during 1940, but control of the towns of Frenchville and St. Agatha was assumed by the board during January, 1941. Potential state control over the government of Allendale county in South Carolina will result from a special act placing the government of that county in the hands of a three-member board of directors appointed by the governor. Gubernatorial appointments to the board, however, are required to be made upon the unanimous joint recommendation of the county's legislative delegation.<sup>40</sup>

The Alabama state division of local finance, established in 1939,<sup>41</sup> seemed to be getting off to a good start. The division has no mandatory authority, its functions consisting chiefly in supplying information, assistance, and advice. Counties are required to file with the division three types of financial information: copies of their annual budgets, after adoption; annual debt statements; and notice of intention to sell any new general-obligation or refunding bonds. Since Alabama counties are now examined annually, the division accepts a copy of the annual audit as satisfying the requirement for a debt statement. In an effort to facilitate the marketing of county securities by making pertinent information

<sup>39</sup> Russell Forbes, *Centralized Purchasing; A Sentry at the Tax Exit Gate* (Nat. Assoc. of Purchasing Agents, New York, rev. ed., 1941), p. 15; Weldon Cooper, note in *National Municipal Review*, Vol. 29, p. 333 (May, 1940). See *supra*, "Finance."

<sup>40</sup> *Acts and Joint Resolutions of South Carolina*, 1940, p. 1873; *Acts of Virginia*, 1940, ch. 41; letter to the writer from A. E. Lewis, chief clerk of property division, State Bureau of Taxation, Augusta, Maine, Aug. 5, 1941.

<sup>41</sup> See this REVIEW, Vol. 34, p. 1164.

readily available to potential investors, the division compiles each year a statement of the interest-bearing indebtedness of all counties. These statements, showing outstanding obligations, revenues chargeable with such obligations, and the assessed valuation of property, are disseminated widely through investment channels. When notified of the intention of a county to issue bonds, the division investigates and advises whether, in its judgment, such issuance would have a deleterious effect upon the credit or general financial condition of the county concerned. However, the advice of the division is not binding upon the county, but may legally be disregarded. The division has adopted the practice of giving advance notice of each proposed sale of county securities to all bond dealers doing business within the state; which practice has resulted in keener competition and a consequent advantage to the counties in the form of better prices for their offerings. Although the statutes do not require that the division be notified of intent to issue gasoline tax warrants, the state agency upon request will, as in the case of bonds, send out notices of warrant sales to securities dealers. Some counties have availed themselves of this additional service. Still another service rendered to counties by the division of local finance involves technical assistance to the local units in the issuing of their bonds or warrants. Upon request by a county, the state division will prepare an appropriate schedule of maturities, prepare necessary resolutions and bond or warrant forms, superintend the printing of the securities, procure the required legal opinion approving the validity of the issue, and assist in selling the securities. Since the only cost to the issuing county, when this work is handled by the state division, is the actual cost of printing the bonds or warrants, together with attorney's fees, the local unit enjoys a substantial saving as compared with costs when the proceedings are managed under contract by a private securities house.<sup>42</sup>

Kentucky's state local finance officer<sup>43</sup> reported that, during the first fiscal year of operation of that state's county debt act,<sup>44</sup> hearings had been held on twelve proposed bond issues of nine counties. Of the twelve issues, ten, amounting in the aggregate to \$867,500, were approved by the state local finance officer, and two, totaling \$400,000, were disapproved. In both instances of disapproval and in five instances of approval, appeal was taken from the decision of the state local finance officer to the county debt commission, an *ex officio* state agency. The debt commission affirmed the local finance officer's decision in five instances, including the two cases of disapproval, and reversed that official's decision in two instances. In all seven instances in which appeal was taken to the county debt commission,

<sup>42</sup> Data supplied by Edward B. Crosland, chief of division of local finance, State Department of Finance, Montgomery, Alabama.

<sup>43</sup> The state commissioner of revenue is *ex officio* state local finance officer.

<sup>44</sup> See this REVIEW, Vol. 33, pp. 1066-1067, 1070.

subsequent appeal was taken from the commission's decision to the courts. At the time of publication of the report, the courts had finally upheld the debt commission in three cases, while four appeals were still pending.<sup>45</sup>

It seems an interesting commentary upon the attitude of Kentucky counties toward the work of the state local finance officer that the submission to that officer of eleven of the twelve proposed bond issues submitted was optional on the part of the counties. Indeed it appears that only two counties which have issued bonds since the enactment of the county debt law have elected not to submit their issues for approval, and that in both of these instances refunding operations had been initiated before the act became effective. Also significant is the fact that the county officers and representatives of bond houses acting as refunding agents for the counties have usually consulted with the state local finance officer regarding refunding plans before any formal action has been taken thereon. This has afforded an opportunity to eliminate objectionable features of any plan before its submission for approval, and no doubt explains, at least in part, why so few of the proposals submitted have been disapproved. Although most of the bond issues thus far submitted for approval have been handled by bond houses, the local finance officer has acted as the county's refunding agent in a few instances, and he reports negotiations under way with a number of other counties with a view to handling their refunding operations at no cost to the counties except necessary expenses such as printing costs and attorney's fees.<sup>46</sup>

New Jersey's local government board is charged by that state's fiscal supervision act of 1938 with the application of corrective measures to local units in the early stages of fiscal difficulties in an effort to forestall serious defaults.<sup>47</sup> By the terms of an act of 1939 transferring to the local government board the duties formerly devolved upon the municipal finance commission,<sup>48</sup> the board is also charged with supervising units actually in default. During 1940, the board released from its supervision eight of the 24 townships which it had supervised during the preceding year under the fiscal supervision act, while only one additional township was placed under the board's jurisdiction. At the end of 1940, four townships were under the jurisdiction of the local government board functioning as a municipal finance commission, one township having been released from such jurisdiction during the year. Although the fiscal supervision act was amended in 1939 to include counties within its provisions, no county was placed under the supervision of the local government board during 1940.<sup>49</sup>

<sup>45</sup> *First Report of the Kentucky State Local Finance Officer . . . for Fiscal Year Ending June 30, 1940.* <sup>46</sup> *Ibid.*

<sup>47</sup> See this REVIEW, Vol. 33, p. 1066. <sup>48</sup> *Acts of New Jersey, 1939, ch. 385.*

<sup>49</sup> Data supplied by New Jersey Department of Local Government. See also this REVIEW, Vol. 34, p. 1163; *Secnd Annual Report of the New Jersey Local Government Board, December, 1940.*

*Federal-Local Relations.* State legislatures continued to enact statutes designed to facilitate coöperation between local units and the federal government. Three such laws were adopted by Mississippi. One of these authorizes counties to levy a tax for the purpose of coöperating with the U.S. Department of Agriculture and the Mississippi Experiment Station in the preparation of maps and reports of soil surveys and land classifications; another empowers counties and municipalities to coöperate with the Federal Surplus Commodities Corporation in putting into effect the federal food-stamp plan and providing the necessary revolving fund therefor; while a third authorizes certain counties bordering upon the Mississippi Sound or Gulf of Mexico to coöperate with the W.P.A. or other governmental agencies in repairing roads and sea-wall structures. Virginia counties, along with cities and towns, were empowered to make agreements with federal agencies for the purpose of making publicly available, for the benefit of their respective jurisdictions, relics, paintings, carvings, sculpture, and other works of art. Louisiana provided that the police juries of parishes, as well as designated agencies of other local units and of the state, may donate or otherwise transfer to the federal government lands or other property for use in connection with the national defense program or for other specified purposes.<sup>50</sup>

Local soil conservation districts continued to be assisted in their activities by the Soil Conservation Service of the U. S. Department of Agriculture. By August 15, 1941, that federal agency had entered into "memoranda of understanding" with 479 local districts embracing approximately 297,784,752 acres.<sup>51</sup> Likewise continued was the program of financial assistance to county housing authorities by the United States Housing Authority. As of June 30, 1940, the federal agency was reported to have entered into loan contracts with ten county authorities in eight states, and to have made loan earmarkings for four additional county authorities.<sup>52</sup>

The Tennessee Valley Authority Act was amended to assure to each Valley state and to each county therein a minimum "in lieu" payment equal to the property taxes formerly received from power property purchased by the Authority and reservoir lands allocated to power.<sup>53</sup> During the fiscal year ending June 30, 1941, payments under this provision were made by the Authority to 111 counties, in some of which the federal payment constituted the largest single item of county revenue.<sup>54</sup> By the amendatory act, the Authority was also directed to report to Congress not

<sup>50</sup> *Acts of Louisiana*, 1940 (reg. secs.), no. 75; *Laws of Mississippi*, 1940, chs. 252, 258, 267; *Acts of Virginia*, 1940, chs. 23, 270.

<sup>51</sup> Data supplied by Soil Conservation Service, U. S. Department of Agriculture. See *supra*, "Areas."

<sup>52</sup> *First Annual Report of the Federal Works Agency* (1940), pp. 348-352. See *supra*, "New Functions." <sup>53</sup> 54 *Stat. at L.* 626.

<sup>54</sup> Lawrence L. Durisch, "Local Government and the T.V.A. Program," *Public Administration Review*, Vol. 1, pp. 326-334 (Summer, 1941).



later than January 1, 1945, on the operation of the in-lieu payment provision and its effect upon state and local finance. This, it has been suggested,<sup>55</sup> is probably the first time that Congress has instructed a federal agency to make a comprehensive report on the effect of its program upon local government. It appears that there has been general improvement in the character of local government in the Valley states during recent years, and that this improvement may reasonably be attributed in part to the Authority's influence. "Thus," in the words of a current writer, "the T.V.A. program has not been merely a federal program superimposed on state and local government in the Tennessee Valley. It has been, of course, a federal program, directly responsible to the President and the Congress, but in its relationship to local authorities its purpose has been to invigorate their administration, and to provide technical knowledge and facilities in order to free local government from some of the handicaps that have held it back in the past. The close relationship between operating officials of the T.V.A. and those of local agencies—in direct functions such as law enforcement and highway maintenance as well as in staff functions like finance and planning—has made the influence of the T.V.A., although impossible to measure, a persuasive force for the strengthening of local government in the area."<sup>56</sup>

The impact of the national defense program began to be felt, although for the most part indirectly, by counties and townships. There seemed to be a general feeling that those units, as well as cities and states, should curtail their activities and expenditures wherever reasonably possible in order to offset in some degree the increasing burden of federal expenditures for defense. Thus there appeared some tendency to reduce expenditures on locally-maintained farm-to-market roads, that more public funds might be made available for arterial highways of potential military importance. Some decrease in relief expenditures was made possible by increased employment in defense industries. On the other hand, it seemed likely that these savings in local expenditures might ultimately be offset by increased outlays for airports, armories, housing projects, and other facilities related to defense activities.<sup>57</sup>

In amending the federal Municipal Debt Readjustment Act, Congress extended its provisions for composition with creditors to counties and special assessment districts. Counties had been excluded from the benefits of this legislation in 1937 in an effort to meet constitutional objections of the Supreme Court to the original statute of 1934. Apparently Congress believes that the Court would now sustain application of the legislation to counties.<sup>58</sup>

CLYDE F. SNIDER.

*University of Illinois.*

<sup>55</sup> *Ibid.*      <sup>56</sup> *Ibid.*, p. 331.

<sup>57</sup> Cf. Paul W. Wager, "County Government," *Municipal Year Book*, 1941, pp. 243-248.

<sup>58</sup> 54 *Stat. at L.* 667. See this *REVIEW*, Vol. 32, pp. 950-951.

## INTERNATIONAL AFFAIRS

**The Political Basis of Federation.** A predominant note in the speculations of liberal-democratic thinkers on the subject of post-war reconstruction has been an insistence on the need for "some kind of a federation." As a popular catch-word, "federation" has undoubted propagandist value. It has come to acquire some of the magic properties once associated with phrases like "a parliament of man," "league of nations," and "outlawry of war." For the pamphleteer and orator, therefore, it is a ready-made formula which should be fully exploited for the purpose of engendering a readiness for international collaboration.

✓ (In a general sort of way, we can grasp the federal idea as a response of the mind to the political problem of the one and the many—of the need for achieving both unity and diversity, order and liberty, centralization and autonomy—in the composing of human affairs.) Nevertheless, there is need for a critical examination of "federation" as a political principle or system, of the circumstances out of which federations have arisen and can arise, and of the conditions of their successful operation. In these few pages, an attempt will be made to indicate a few types of theoretical and historical investigation which may, it is hoped, prove stimulating in the quest for understanding.

~ (Analysis of the basis of federation is impeded, at the outset, by the apparent ambiguity of the concept. The common elements in the political structures of the United States, Canada, Australia, Switzerland, South Africa, the Germany of Bismarck and of the Weimar Republic, are extremely elusive. General usage sanctions application of the term "federal" to their governmental forms, but some opposition is raised to the inclusion of some of the inter-city associations of the Hellenic world, or the present U.S.S.R., or the Argentine, Venezuela, and several other Latin-American republics. Etymology is even more confusing, since the Latin *foedus* conveys a sense much less extensive than normally covered today by "federation." An examination of authorities shows a studied evasion of sharp definition, and much elaboration of qualifications, exceptions, and variations.

But political scientists are never unduly dismayed at having to talk about something the meaning of which no two can agree on. Most of the general concepts with which they have to deal are no less fluid in their textual composition. Here, however, (one may resort to the logical device of conceptual extremities linked by continuous gradations.) At one end of an imaginary line may be posited the idea of an absolute, unitary world-state, and at the other the conception of complete anarchy—a number of disconnected units in a condition akin to Hobbes' fictional state of nature. The extremities are always conceptual, never actual, and any given period

of international relations may be charted somewhere between, along a sliding scale. Starting from the state of anarchy, one imagines, in succession along the line, a nebulous international law, the development of voluntary institutions and procedures, then a confederation, next a federation, and on and on, and finally, the emerging condition of a world-state. No sharp line separates one from the other—for instance, a confederation from a federation—but rather twilight shadings to confound the pedant. (Indeed, one may expand the conceptual structure into a two-dimensional form to introduce other notions varying from an absolute master-slave relationship to absolute equality, but, for the moment, there is need for simplicity rather than complexity.)

At the exact center of this conceptual series may be placed the pure idea of federation—a perfect balance or compromise between the extremes: a form of political organization which represents a compounding of separate units in such a manner that a central authority prevails in the sphere of common concern, and the several autonomous authorities in the sphere of partial concern. At some indefinite point moving off to the one side of this conceptual pivot, the central authority would become so powerful and extensive that the individual parts would become subordinate, and a unitary form of government would develop; equally, in the other direction, the point would be reached where the central power would cease to exercise an independent will and become a mere servant of the local governments, and thereupon federation would fade into a confederation or a league. Without laboring verbal distinctions, it must be repeated that the essential feature of federation is the existence of two focal areas of political will—the central which controls the aggregate of individuals in their entirety, and the several local ones which govern autonomously in their respective territorial sub-divisions. Behind both must exist a constitutional understanding defining the spheres of authority.)

But, it may be asked, is not all this mere pedantry? Of what avail is such an exercise in political logic for the liberal-democratic planners of a new world order? Do we not, in the practical world of political action, tend to create first, and let the academicians legitimize the offspring with an appropriate name afterwards? Without denying the practice, one may still question its social desirability. Much would be gained even if a clear comprehension of the essential nature of federation should lead to a total rejection of the idea in thinking about international reconstruction. We should then be better equipped for planning a more realistic alternative.

So much for definition. (Now, federation may develop as a result either from a centrifugal political force—the breaking down of a unitary form of government; or from centripetal action—the building up of parts into a new entity.) The former is obviously of no value in the quest for light on international relations, and it is to the latter that we turn. Here arise two

fundamental questions: (1) What are the propulsions making for centripetal action leading to federation?, and (2) what are the conditions upon which an effective federation can be maintained?

The most important forces of a political, or psychological, order which serve as efficient agents in the creation of federation are fear, a calculated expectation of advantage, and a response to some unifying ideal or myth. Of these three, the most important motivation is probably fear. Fear may develop from direct attempts at intimidation, or from a sustained and profound feeling of insecurity. Intimidation, shading into actual coercion, may be undertaken by a strong political unit seeking to obtain the adherence of weaker units under a nominal federal form. The term is too strong to apply to the methods by which overwhelmingly predominant Prussia initiated, first, the North German Confederation of 1867, and second, the Empire of 1871; but the smaller states of Germany were thoroughly aware of Bismarck's indomitable purpose to achieve union no matter what the cost. "A more extensive union of the majority of Germans," said he in 1868, "could be obtained only by force—or else if common danger should arouse them to fury." The former alternative did not become necessary, since the latter intervened. The method of intimidation of the weak by the strong is not recommended to the architects of international federation, but in extreme cases it may present the only feasible alternative if union be deemed a supreme necessity.

A sustained and profound sense of insecurity has proved a most efficient agent for social and political integration, and advocates of international federation do well to recognize that fact. The insecurity may be political—the fear of invasion, war, or rebellion; or economic and financial—the fear of panic and starvation. Financial fears contributed to the successful efforts of the Philadelphia Convention of 1787; and political danger (encountered in the Franco-Prussian War) to the Empire of 1871. Where the danger is visualized as concrete and external to the federating groups, its integrating power is far greater than if the menace is conceived abstractly as some indeterminate aggression within the projected association. Unity, in other words, is cemented by specific, external opposition. Thereby is indicated an inherent weakness in any plan to establish universal federation all at one stroke. All that it can promise is the curbing of some unnamed political enemy within. If that enemy be clearly indicated, why should he unite with the others? If no enemy be clearly indicated, the danger is too remote, contingent, and unpredictable for any to find need to unite.

A possibility remains that the imminent prospect of world-wide economic collapse may prove an effective incentive to union. In facing such disaster, however, the position of some would undoubtedly be stronger than that of others; the fear and hope would be of uneven intensity. The

*In answer  
to question*

strong are then disinclined to encumber themselves with the problems of the weak; a partial federation may be facilitated, but a universal union may be far off in realization.

Again, where insecurity is not felt strongly, there is little incentive to undertake more extensive obligations. A firm belief in its ability to take care of its own defense and economic problems has for decades kept the United States in its policy of isolation. In the years already upon us, that confidence has been rudely shaken, and Federal Union advocates have correctly gauged the importance of that fact. Only when isolation comes to be regarded as a greater danger than union, only when it becomes unmistakably evident that comfortable existence cannot be maintained through independence, will the impulse to federation become strong enough to be translated into action.

Having said that, only a word is needed with regard to the other possible motivations for the act of federating. A rational calculation of advantage is important and certainly must play a part in the appeal to the practical, hard-headed class of voters. In the United States, the *Federalist* papers stand as eloquent testimony to the utility of this type of approach. Likewise, the desirability of evoking some unifying ideal, symbol, or myth cannot be overlooked. Here the word "federation" itself supplies the need for those long accustomed to its meaning and practice. The idea of an English-speaking unity, or that of a Union of Democracies, might have even greater force. Unfortunately for the leaders of the Pan-European movement, the geographical contiguity has had no electrifying appeal—certainly not as against the deep-rooted divisions on that continent. Since the disappearance of the unity of Christendom, no universal myth has appeared sufficient in power to unite all classes and races of humanity, although some have urged that "peace" or "social justice" might at some distant day supply that force.

It may be said, in summary, that in founding an international federation, the propulsions of political and/or economic insecurity are believed to be absolutely indispensable, and a rational expectation of gain, along with a unifying ideal, of secondary (but nevertheless great) importance.

Even if some overwhelming fear psychosis should provide a propulsion sufficient for the creation of a federal structure, it does not provide a sustaining power over the long haul. For effective operation, the federal union must discover an enduring as well as a generating basis. Some of the problems may be indicated.

First, the parts of the federation must not represent too great a diversity in size, culture, and the level of their political and economic development. Contrast in size is probably of least importance, although one may well argue that the unusual predominance of Prussia undermined the federal structure of Germany. Even in a league, there are disadvantages, as

the example of Athens in the first Athenian League testifies. Internationally, however, the ratio which the population of the United States bears (for instance) to New Zealand is not as great as that of the state of New York to that of Nevada. Sharp differences in the levels of culture and of economic and political development are another matter. The project for European union has to contend with the difficult problem of linking together in common life on a basis of equality the undeveloped peoples of southeastern Europe with the advanced communities of the northwestern part of the continent. And international federation (whatever its constituency) would certainly have to maintain a superordinate trusteeship over most of Africa and part of Asia, at the least—all sentimentalism to the contrary. So far as this factor is concerned, the proposal for the Federal Union of the Democracies has an undisputed advantage over other projects.

Second, geographical contiguity is unquestionably desirable. All existing national federations possess such contiguity, and it is a most compelling argument for European and other continental unions. Part of its advantage has to do with compactness for defense purposes, part for the similarity of internal problems, and part for the practicability of legislative assemblage and administrative controls. The plan for the union of America and the British Commonwealth raises defense problems of sea power, which are not insoluble. Such a union could not possess an effective land force on the continents of Europe and Asia, and should only be extended to include countries in those regions which can find a means of continental defense. Common assemblage in a union parliament and the establishment of some central administrative control present problems far more difficult for the British-American plan than for a continental federation. It is too much to say that geographical obstacles render such a plan unworkable, but they suggest that the degree of federal unification and power cannot be too extensive.

Third, unifying forces of a spiritual, emotional, or ideological character not only contribute to the formation of union but give it sustenance and vigor in its struggle for survival. While useful at the time of emergence of union, their strength may be increased through the slow crucible of common experience—governmental, administrative, social, economic, and intellectual. Thus the myths of the American Union have grown slowly over a century and a half, and the fusion of the parts of the Union has been a correspondingly gradual process.

Finally, we must consider the problem of the sources from which the central government of a federation may derive its power. There is no true federation, it will be remembered, unless the central authority possesses a power of decision and action independent of the wills of the separate governments, Briand's plan for European Union, involving a sort of coun-

✓ cil of governmental delegates acting under instructions from home, was certainly not a federal conception. One of the most widespread misconceptions about international federation is that it may result from, or be sustained by, a simple abdication of sovereignty on the part of independent governments. In the first place, national governments cannot, and will not, transfer their sovereignty to an agency which is only defined on paper. In the second place, if the power of the central organs emanates solely from such authority as each governmental subdivision grants, then that central will is subordinate to the separate wills—at least in their aggregate. Even though majority procedures be substituted for those of unanimity, a dissentient minority could withdraw or terminate its contribution of men, money, materials, and other instruments of power at any time. The inherent weakness of a league or confederation would not have been overcome.

The government of a federation must, therefore, develop its power from sources (at least in part) independent of the national governments. The bases of power in this connection are three-fold: political (or representative), financial, and military. Policy-making officials of the central government must (at least in part) be chosen by direct or indirect election. There can be no such thing as a federation which includes totalitarian régimes denying free political action. The American Constitution recognized the necessity for instituting direct and indirect elections instead of appointments by the executive power of the several state governments. Bismarck's decision to advocate a national German parliament elected by universal franchise resulted from his clear recognition of the need for generating a political force strong enough to override state particularism. The development of political parties across state frontier lines is thus facilitated, and this development in turn provides a new unifying basis for the federation. Again, the proposal for a Federal Union of the Democracies has seized hold of an essential attribute of federation. There can be a real federation only where domestic conditions permit the organization of people in their private capacities, the holding of free elections, and the maintenance of representative institutions. Only thus could an independent basis for the power of the federation's central government be obtained.

The second basis of power is financial, and that also must come from the people through the power of direct taxation, rather than through the device of levies upon state governments.

Given financial independence, the third basis—military power—can also be found in the people through direct recruitment and organization of personnel. Moreover, the central government must, through this independent force, maintain a military monopoly. It should be noted again at this point that the implications of the "Streit plan" differ sharply from

those of continental or world federation. Democratic Union advocates do not conceive the military function as that primarily of preventing civil war, but of consolidating forces for defense against some enemy without. European, or world, federation, on the other hand, is generally thought of as a device for curbing some aggressor within the association. It should be unmistakably clear that the union of democracies on this score faces an easier task because of its greater cohesion.

The foregoing observations were not prepared as a brief for or against any particular project for international organization. Their purpose is simply to suggest the need for a more thoroughgoing analysis of a concept which has been so frequently and loosely employed in the literature of liberal-democratic world planning. All of this speculation will, of course, have been utterly futile if the Axis triumphs, since no opportunity will be provided for the free association of peoples. In the event of British (or, it may be, an Anglo-American) victory, at least a strong probability exists that the federal idea, or some diluted form thereof, will receive favorable attention in the task of political reconstruction. In terms of practical politics, the constitutional crystallization of such a union might follow, rather than precede, the slow *ad hoc* development of a number of specific institutional arrangements performing a variety of functions.

In the light of the foregoing analysis, certain propositions dimly emerge: (1) A universal federation, in any approximate use of the term, is merely a distant dream. This does not rule out a universal "league." (2) The concept of European (regional) federation suggests the existence of greater politico-psychological obstacles than could be overcome within any reasonable period following the present war. (3) The idea of a Federal Union of the Democracies, based at the outset on the participation of the United States and the members of the British Commonwealth, is intrinsically sound when tested by a number of the above principles.

No attempt has been made to examine the Streit or similar plans in terms of their relative desirability. Likewise, the feasibility of creation as well as of operation has been considered on a restricted rather than on a comprehensive basis. It is submitted, however, that the Streit proposal deserves a more careful analysis and evaluation at the hands of political scientists than it has hitherto received.

The state of the world in 1941 is sufficient excuse for a confessional postscript. I do not deny that the relationships between a limited democratic federation and the rest of the world must for a long time be based to a considerable extent on power—and the power of the federation must be made superior. I see no way to avoid that conclusion. In any ordered world, there must be power to maintain it. If that power cannot be generated from sources equally distributed all over the world, it must, and indeed will, be found somewhere. I should prefer that it arise from those people



who, not because of any inherent racial qualities, but because of the state of their political development, are more likely than any other political group in the world today to exercise that power in a moral manner. The human world is made up of refractory, not plastic, materials. It cannot be made over in a day, or in decades. The demands of the machine age make the elimination of periodic war imperative; power is necessary (though not sufficient) to that end; and it is "we or they" who will wield that power. If the ultimate power be held by those societies in which moral and humanitarian forces are allowed to develop and operate unimpeded, therein lies the best chance (among present alternatives) for brutish power to be transmuted swiftly into "moral" power.

WILLIAM P. MADDOX.

*University of Pennsylvania.*

**Hegemony and International Law.** In the titanic struggle for leadership in Europe, Great Britain is resisting the most formidable challenge to her supremacy. For centuries, her principal foreign policy was to prevent any establishment of hegemony over the entire European continent. After the first World War, British statesmen, however, were convinced "that they could no longer bear the burden of regulating world affairs alone. They urged a League of Nations. . . . But national sovereignties were no more prepared to collaborate in a democratic world organization than they had been to submit to British domination. Thus, instead of the League of Nations succeeding to the British imperial hegemony, the world fell into anarchy in a new struggle of several states, each striving to become the dominant Power."<sup>1</sup>

With the avowed purpose of establishing a "New Order," Adolf Hitler, under the aegis of the *Lebensraum*<sup>2</sup> theory, the "cardinal point in National Socialist foreign policy,"<sup>3</sup> has succeeded, at least for the time being, in establishing control over most of the continent of Europe. When France

<sup>1</sup> Quincy Wright, "The Present Status of Neutrality," *American Journal of International Law*, July, 1940, pp. 414-415. See also Frederick L. Schuman, *Europe on the Eve* (New York, 1939); *ibid.*, *Night over Europe; The Diplomacy of Nemesis, 1939-1940* (New York, 1941); Edward Mousley, *Man or Leviathan?* (London, 1939); Edward H. Carr, *The Twenty Years' Crisis* (London, 1940); and Paul Birdsall, *Versailles Twenty Years After* (New York, 1941).

<sup>2</sup> See my article, "Germany's *Lebensraum*," in this REVIEW, Oct., 1940, pp. 964-975. Cf. René Cassin, "Que subsiste-t-il du droit international?," *Revue des Questions de Défense Nationale*, Jan., 1940, p. 68: "Depuis quelque temps, l'espace vital (*Lebensraum*) a été présenté par Hitler comme sa plate-forme de politique extérieure." Carl Schmitt, "Raum und Grossraum im Völkerrecht," *Zeitschrift für Völkerrecht*, Vol. 24, No. 2, 1940.

<sup>3</sup> E. Muller-Sturmheim, "From Kant to Hitler," *Quarterly Review* (London), Jan., 1941, p. 84. See also Adolf Hitler's order to the German army on April 6,

collapsed in June, 1940, Nazi Germany celebrated the destruction of France's "dream of hegemony over the European continent"<sup>4</sup> and urged her to "collaborate" in the establishment of the "New Order." Subsequently, the new Chief of State, Marshal Pétain, declared that "we can articulate our thought and our action with those which tomorrow will pre- side over the reorganization of the world."<sup>5</sup>

We are in the midst of one of the most troubled periods of the world's history, when events are moving with rapidly increasing speed towards some great climax in which the composition and alignment of nations may alter. "While it is hard to distinguish between a war emergency arrangement and plans for permanent reorganization, it seems likely that Hitler's political purpose is to create a German *Lebensraum* by driving the Bolshevik régime into Asia. . . ."<sup>6</sup> The theater of war may subsequently spread beyond the Black Sea and the Mediterranean realm. The Axis Powers contend that dominance in the Mediterranean depends upon power relations on the European continent and argue that history proves that it never was possible to form a European unity without inclusion of the Mediterranean realm. The Roman Empire finally collapsed because its power bases in the Mediterranean were not sufficiently strong to uphold the process of increasing continentalization. The Mediaeval Empire was not completed and Napoleon's attempt to establish a hegemony over Europe failed because they were deprived of dominating the Mediterranean. The reconstruction of Europe on its own, and on a permanent, basis is therefore realizable only if disturbances from the Mediterranean are no longer to be feared.<sup>7</sup>

"The world's experience with violence and with consent has been a very long one. History and literature are filled with examples of both and of elaborate and well-wrought reasoning about both."<sup>8</sup> A new phase in the fierce struggle of the Great Powers was opened with the historic meeting between President Roosevelt and Prime Minister Churchill on the high seas early in August, 1941. "If the Declaration of the Atlantic, released to the world on August 14, 1941, is taken merely as a restatement of the

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1941, "to march into Yugoslavia and Greece in order to secure a 'living space' for the German family."

<sup>4</sup> J. v. Essen, "Frankreich's kontinentaler Hegemonietraum," *Vergangenheit und Gegenwart* (Leipzig), Vol. 30, No. 4, 1940.

<sup>5</sup> "Marshal Pétain and the 'New Order'," *Foreign Affairs*, Apr., 1941, p. 673.

<sup>6</sup> Bruce Hopper, "The War for Eastern Europe," *ibid.*, Oct. 1941, p. 23.

<sup>7</sup> Albert Prinzing, "Die europäische Bedeutung des Mittelmeers," *Zeitschrift für Politik*, Jan., 1941, pp. 33-46.

<sup>8</sup> Charles E. Merriam, *Prologue to Politics* (Chicago, 1939), p. 1. The appendix to this book (pp. 101-108) contains bibliographies and suggestive lines of research and exposition. See also Robert C. Brooks, "Reflections on the 'World Revolution' of 1940," in this Review, Feb., 1941, pp. 1-28.

democratic faith in international relationships, nine-tenths of its significance will be lost. . . . The Declaration marks, in effect, the assumption by the two great English-speaking democracies of the leadership of the free world."<sup>9</sup> The formulation of the Eight Points, by sealing the solemn engagement of England and the United States to continue their efforts until the 'destruction of the Nazi tyranny' is achieved, marks the transition to a moral, political, and industrial offensive. . . . In the Far East, Japan is at least being treated as an aggressor whose next move will be met by force."<sup>10</sup> "It has become one of the major assumptions in world politics that no Great Power is to be permitted to establish hegemony over China, and therefore, by a kind of political gravitation, over all Eastern Asia, without resistance by the other Great Powers—that is, unless the others are immobilized by struggles in another area or otherwise rendered impotent."<sup>11</sup>

Accepting the challenge expressed in the communiqué announcing the Hitler-Mussolini meeting on the Russian border on August 29, 1941, to the effect that "destruction of the Bolshevik danger and of plutocratic exploitation will create the possibility of peaceful, harmonious, and profitable coöperation of all peoples of the European continent in the political as well as in the economic and cultural spheres," Foreign Secretary Anthony Eden declared in a speech to munitions workers at Coventry on August 30, 1941, that the Roosevelt-Churchill eight-point Atlantic formula in contrast "establishes principles which will be equally valid for all nations" and "excludes all idea of hegemony or zone leadership in the east or west."

The results from this prolonged struggle cannot be foreseen with confidence, and the post-war world will be confronted with a variety of complex dilemmas.<sup>12</sup> A number of plans for "world order" after the war have been suggested, and additional plans will be submitted in due course, widely divergent in their approaches.<sup>13</sup> Besides the partition of the earth

<sup>9</sup> Geoffrey Crowther, "Anglo-American Pitfalls," *Foreign Affairs*, Oct., 1941, p. 1. <sup>10</sup> Quoted from editorial in *Free World*, Vol. I, No. 1, Oct., 1941.

<sup>11</sup> Nathaniel Peffer, "Omens in the Far East," *Foreign Affairs*, Oct. 1941, p. 50.

<sup>12</sup> Quincy Wright, "Dilemmas for a Post-War World," *Free World*, Oct., 1941, pp. 14-16.

<sup>13</sup> Among others, see William P. Maddox (ed.), *European Plans for World Order* (Philadelphia, American Academy of Political and Social Science, 1940); "When War Ends," *Annals of American Academy of Political and Social Science*, July, 1940; Helen Hill and Herbert Agar, *Beyond German Victory* (New York, 1940); Jackson H. Ralston, *A Quest for International Order* (Washington, D. C., 1941); German "New Order" in Europe, Bulletin of International News, Jan. 25, 1941; Vera Micheles Dean, "Plans for Post War Reconstruction," *Foreign Policy Reports*, May, 15, 1941; Friedrich Stiewe, "Um die Zukunft Europas," *Berliner Monatshefte*, Jan., 1941; Sidney B. Fay, "Problems of Peace Settlement," *Events*, Apr., May, June, 1941.

among a small number of very large states or vast empires, there are still other great tendencies circulating in this world of struggling nations. The classical conception of the "balance of power," while described as inadequate and burdensome to maintain,<sup>14</sup> or doomed to vanish as an unreality, is not yet entirely abandoned and may again become the overriding regulative force in international society. The "direct universalist" conception, inspired by the Pact of the League of Nations in 1919, for practical purposes may have ceased to exist, but some people still see the realization of our hopes in a revived and strengthened League of Nations. Attempts at concerted, superstate action in any scheme of federation<sup>15</sup> may be classified as an "organic" conception and in time may materialize.

At a moment when a clash among rival claims for leadership was impending, Heinrich Triepel, eminent German professor emeritus of law, well known to international lawyers through his classical treatise *Völkerrecht und Landesrecht* (1899), published his monumental *Die Hegemonie*.<sup>16</sup> "At the outset, there are two ways to reestablish a social unity which has gone to pieces," asserts Triepel. The one consists in the establishment or the reestablishment of a universal dominance over the entirety, the other in the federation of the separated parts. When its existence was threatened by a general dissolution, the Catholic Church followed the first-mentioned procedure and gradually overcame church federalism in favor of the ecclesiastical universal dominance of the papacy. The secularized community of states, however, had departed from achieving universal dominance and every attempt to reestablish it was suppressed. However, in every century, the temporal conciliation led to new attempts toward creating a European federation. This is evident not only from certain proposed plans, but from the sessions of the large congresses, beginning with the Westphalian peace congress, to the establishment of the League of Nations. But experience proved that all these enterprises merely created temporary and incomplete effects. As a third and last way, observes Triepel, in order to supplement by a political one, the never lost unity of Europe, culturally enhanced through the spiritual movements of modern

<sup>14</sup> "Commission to Study the Organization of Peace," *Preliminary Report*, Nov., 1940, p. 9. See also comments thereon in this REVIEW, Apr., 1941, pp. 317-324.

<sup>15</sup> For instance, Clarence Streit's remarkable books *Union Now* (1939) and *Union Now with England* (1941) put leaven into human thinking in the Anglo-Saxon world. See also Lord Davies, *A Federated Europe* (London, 1940). A proposal for a "confederation," not as close or as centralized as "Union Now" and including all states which accept the Western tradition of rule by law. The organic concepts expressed by the Holy See may be found in the papal encyclical of June 1, 1941.

<sup>16</sup> Heinrich Triepel, *Die Hegemonie; Ein Buch von führenden Staaten* (Stuttgart und Berlin: W. Kohlhammer Verlag, 1938). The volume combines in a unique manner sociological and historical approach with analytical jurisprudence. Since it is the principal work on its subject, revealing hegemony as a universal phenomenon, the writer is drawing extensively from it.

times, there remained only the way of hegemony; that is to say, hegemony by a single or several European states.<sup>17</sup>

While in *Völkerrecht und Landesrecht* Triepel defined sharply the dualist theory of the relation of international law and municipal law, in *Die Hegemonie* he formulates a rather broad and descriptive interpretation of the term "hegemony,"<sup>18</sup> supported by detailed and well-documented historical illustrations taken from the main periods of world-history. This fundamental concept has received, until now, only occasional and fragmentary consideration,<sup>19</sup> and Triepel remarks (p. 296) that much damage has been done to the teaching of hegemony because in treating the entire complex of questions involved it will be found that "hegemony" is usually confused with such terms as "dominance," "primacy," "supremacy," "superiority," or "preponderance."<sup>20</sup> Terms like "supremacy" or "primacy" are not suitable in describing adequately the nature of "hegemony." They are only a conception of relation, or of comparison, and do not describe the kind of relations with other states, especially not the existing relation of leadership. In the eyes of Triepel, the United States, for example, enjoys primacy in America, but so far has not created a recognized hegemony over the entire American world.<sup>21</sup>

Power is a necessary ingredient of every political order, and the struggle for power forms the principal content of all political history.<sup>22</sup> In the world of international life, the scale of power comprises a considerable number of steps. Viewed from the standpoint of those subjugated by power, there are infinite varying grades of dependence.<sup>23</sup> The scale starts with mere in-

<sup>17</sup> *Ibid.*, p. 294.

<sup>18</sup> "Triepel's book proves to what extent such a broadly stated frame of description may be useful." Comment in *Zeitschrift für Politik*, June-July, 1940, pp. 325-326.

<sup>19</sup> The so-called general theory of the state should have included "hegemony" within its field of researches. Neither in general books on the theory of the state or on general public law or political science, nor in monographs on international relations, can anything suitable be found. In most of these works, the word "hegemony" is not even mentioned. There appears to be one exception: Rehm, *Allgemeine Staatslehre* (1899). But this discussion is not very exhaustive. Little, if anything, will be found on the subject in books on international law, except in chapters relating to the "equality" of states. See, for instance, L. Oppenheim-Lauterpacht, *International Law*, 5th ed., Vol. 1 (New York, 1937), p. 221.

<sup>20</sup> In the more recent literature, the word "hegemony" is correctly replaced by "preponderance" or similar expressions, if it is not concerned with genuine leadership.

<sup>21</sup> Triepel, *op. cit.*, p. 138.

<sup>22</sup> See F. v. Wieser, *Gesetz der Macht* (Wien, 1926); Charles E. Merriam, *Political Power; Its Composition and Incidence* (New York, 1934); Bertrand Russell, *Power; A New Social Analysis* (New York, 1938); James Burnham, *The Managerial Revolution; What is Happening in the World* (New York, 1941).

<sup>23</sup> For interesting schedules, showing the variety of dependence, Hans Gmelin, *Politische Abhängigkeit von Staaten* (Sonderabdruck aus der Festgabe für Richard Schmidt, 1932); Josef L. Kunz, *Staatenverbindungen* (Stuttgart, 1929).

fluence and finishes with dominance. The whole of international life oscillates between these two points. This oscillation, says Triepel, forms the content of all history.

Inequalities of condition or status have always played an important part in international relations.<sup>24</sup> "The multiplication of international contacts and the development of international organization have been accompanied by an increase in the complexity of national constitutions and a steady expansion of the family of nations from the original Christian states of Europe to parts of the world governed by political bodies of widely different conceptions, traditions, and methods. Instead of the simple unitary states of the seventeenth and eighteenth centuries, with authority and responsibility vested in an individual or readily definable body of individuals, there are today Oriental, African, American, as well as European, varieties of federations, confederations, empires, protectorates, suzerainties, commonwealths, unions, and leagues of nations, some of which may be as readily classed with international organizations as with states. Apart from these varying degrees of unity and autonomy of political entities, which may or may not be within a single "state," the powers of government within each entity have often been limited or distributed among a variety of organs by relatively permanent constitutions or customs, thus establishing practical if not legal variations in international capacities. Thus instead of a world of equal, territorially defined, sovereign states, we have a world of political entities displaying a tropical luxuriance of political and legal organization, competence, and status."<sup>25</sup>

Triepel finds that a colorful multitude of causes confront us when we endeavor to define the genesis of hegemonical relations. Each of these relations possesses its individual characteristic and should be examined individually, not only according to its formal or material basis, but also according to the intensity and formation of the relationship. Frequently the foundation of a hegemony is not incorporated in one, but in several, historical causes, and not only in one, but in several simultaneously effective motives. Numerical differences in size, and cultural, military, and economic superiority, are among the different causes unfolding the power of a state. Power exercised over states, continues Triepel, cannot descend farther than dominance, because every additional step would absolutely ruin the personality of the subdued. Alternately, there is no dependence of a state which does not at least exist by influence through some other state. To gain genuine dominance over other states is a relatively rare case of luck, provided the victor can consider it luck at all. No state is ex-

<sup>24</sup> E. D. Dickinson, *The Equality of States in International Law* (Cambridge, 1920), Chaps. VI, VII, VIII.

<sup>25</sup> Quincy Wright, *Mandates Under the League of Nations* (Chicago, 1930), p. 276.

empt from the binding of its will through the influence of a foreign state; it also does not enjoy a total autarchy in the sense of the political ideal of the Greeks.

Like every leadership, declares Triepel, state hegemony is located in the middle (or let us be more precise and say approximately in the middle, because ascending as well as declining trends will be observed) between mere influence and dominance. Degrees of power, continues Triepel, are difficult to measure with a yardstick, and therefore the statement that hegemony may be allocated between these two limitations must suffice. Every state may be at any time subject to foreign influences and may be influenced from different directions. On the other hand, a powerful state can develop simultaneously, also within the same geographical area, influence in one, hegemony over another, state. For instance, in a number of Latin-American countries, the United States has exercised mere influence, in others genuine hegemony.<sup>26</sup> Hegemony is naturally also influence, but not the every-day influence with which every state is confronted. It prevails in the "predominant and decisive influence," as was adjudged to Russia in the German-Russian treaty of June 18, 1887, in regard to Bulgaria and Eastern Rumelia.<sup>27</sup> In contrast to mere influence, dominance demonstrates the ability of a will to motivate other wills by forecasting application of external force. If the subdued state makes efforts to withdraw from its subjugation, it performs an act of secession or rebellion. Sufficient historical evidence has been adduced to show that hegemony has always been based upon recognition by the "led" state, and that it approached its end as soon as such recognition began to vacillate.<sup>28</sup> In summary, it may be said that genuine leadership is less than domination, but more than mere influence. It is energetic power exercised over the will of another, but controlled by self-restraint of the leading state, which must enjoy the voluntary support of its following. There is no hegemony without following, emphasizes Triepel.

Ambition for power, primarily that for political power, is usually accompanied by a desire to have such power recognized, not only morally, but also legally. However, it should be made clear that legalization creates only possibilities and no certainties. Nevertheless, legalized leadership plays the predominant rôle in all stages of social life. Every leader must constantly calculate upon competition and upon attempts by others to gain leadership. It is a "regular struggle for hegemony."<sup>29</sup> Hence the leading state will make efforts to seek confirmation or support of its leadership by some kind of legal acknowledgment. Will to power in political affairs is

<sup>26</sup> Both of these descriptions are well separated by Alejandro Alvarez, *Le Pan-américanisme et la dixième Conférence panaméricaine* (1928), p. 46 *et seq.*

<sup>27</sup> F. de Martens, *Nouveau Recueil Général*, 3. série, Vol. X, p. 37.

<sup>28</sup> Triepel, *op. cit.*, p. 140.

<sup>29</sup> *Ibid.*, *op. cit.*, p. 47 *et seq.*

also will to formulate a legal condition, because the continuation of power is protected against the competition of a third state only through the creation of such a condition. If such a will of the state seeking or exercising hegemony is confirmed in a formal manner, then, says Triepel, we are concerned with a legal or institutional hegemony. Legalization of a hegemony can take place also within a larger framework. A very characteristic demonstration of hegemony of the Great Powers may be found in the constitution of the League of Nations. It is the first case in which a "legal basis" was provided for a political hegemony of those Powers.<sup>30</sup>

Hegemonies may be legalized by treaties, agreements, laws, or statutes. Some countries even resort to constitutional confirmations when establishing hegemony. They induce the follower state to recognize as effective and binding certain instruments pertaining to hegemonical leadership, thus strengthening the status of hegemony. The most outstanding example of fostering hegemony by constitutional law, anticipating intervention by the follower state, was Napoleon's issuance of the Swiss Act of Mediation in 1803. He dictated a constitution for Switzerland and made any change dependent upon his will and decision. The United States also made efforts to strengthen its hegemony over Cuba, Panama, and the Philippines by constitutional acknowledgments.<sup>31</sup>

In addition to the legalized hegemony, there exists the "actual" or so-called "factual" hegemony. This type of hegemony is rarely mentioned in any literature, apparently because writers prefer to discuss legal or institutional dependencies. As to this type of hegemony, it may be said "that in all power or cultural movements, the motive powers of social organisms act beyond the law and perform their most powerful actions independently of law, and even contrary to law."<sup>32</sup> Triepel contends that the factual hegemony is as genuine as the legalized, at times even more genuine. A hegemony is genuine if it combines leadership with the confidence of the followers. Factual hegemony may be observed throughout the history of mankind. The best illustration is the hegemony of the Great

<sup>30</sup> L. Oppenheim-Lauterpacht, *op. cit.*, pp. 224-226: "The end of the World War found Germany and Austria-Hungary defeated and the latter dismembered. Russia had undergone far-reaching internal changes and had, at that time, adopted a new international outlook. The importance of the remaining five, who are described in the Treaties of Peace as the 'Principal Allied and Associated Powers,' was recognized by Article 4 of the Covenant of the League in the composition of the Council, whereon Great Britain, France, Italy, and Japan (the United States having abstained from joining the League) acquired permanent seats. Thus the political hegemony of the Great Powers was, for the first time, given a legal basis and expression in the most international instrument." In the former editions of this treatise, the view was expressed that the Covenant had not altered the law in this respect.

<sup>31</sup> Triepel, *op. cit.*, p. 204.

<sup>32</sup> Otto v. Gierke, *Das Wesen der menschlichen Verbände* (1902), p. 33.



Powers within the European state system, coupled with the beginning of a hegemony of "world powers" within the entire community of nations. The question arises whether or not this "collective" hegemony should be considered a legal or an extra-legal appearance. Some authors have described it as a component part of European international law, or, at least, the most important contribution toward forming a European organization.<sup>33</sup> While the statutes of the League of Nations assured the Great Powers a certain primacy, events have proved that the initiated legalization of this hegemony was not entirely successful.<sup>34</sup>

Legalization was deferred on account of internal deficiencies to which every collective hegemony is subjected, and owing to the lack of the first supposition upon which every formulation of law, even common law, is based, that is, the existence of a *communis opinio* among the members of the association. The venture was doomed to failure also because the majority of European states did not feel inclined to discard the maxim of legal equality of all individual states. As long as they adhere to this maxim, ventures Triepel, it will form an obstacle to a legalization of any hegemony considered in conflict with it, even if such hegemony is created by the Great Powers. The existence of this "collective" hegemony cannot be denied, but it was merely a factual one.<sup>35</sup>

It would be difficult to prepare a list showing "legalized" and "factual" hegemonies, and to indicate definitely when the one type or the other may preferably occur in international relations. As a whole, the history of state hegemonies produces sufficient evidence that every genuine leadership is independent of legal stipulations. Neither a law nor a treaty can produce a hegemony. A hegemony, according to Triepel, which is merely written on a piece of paper and is not based upon the strength of initiative of the leading state, and upon the political capability to lead, is mere fantasy. Just as a legalization may contribute to the establishment of hegemony, it also may prevent the same. In the most absolute form, hegemony over a third state is hindered when the contracting parties agree to destroy the state and partition it. The partitions of Poland are the most outstanding examples of such politics in world history.<sup>36</sup> Triepel attempts to prophesy that a genuine hegemony will gradually spread over all the Western hemisphere under the leadership of the United States, not-

<sup>33</sup> John Westlake, *International Law*, Vol. I (Cambridge, 1904), p. 308 *et seq.*; *ibid.*, *Collected Papers* (Cambridge, 1914), p. 99 *et seq.*; especially T. J. Lawrence, *Essays on Some Disputed Questions in Modern International Law* (2nd ed., Cambridge, 1885), p. 208 *et seq.*, principally pp. 227, 230, 232; also, *ibid.*, *Principles of International Law* (7th ed., 1923), p. 245.

<sup>34</sup> Carl Bilfinger, *Völkerbundsrecht gegen Völkerrecht* (Munich, 1938), p. 10, and Chap. V, "Garantie des Status quo durch Hegemonie und Sanktionen"; also G. W. Keeton and G. Schwarzenberger, *Making International Law Work* (London, 1939).

<sup>35</sup> Triepel, *op. cit.*, p. 205.

<sup>36</sup> *Ibid.*, *op. cit.*, pp. 206-208.

withstanding all anti-hegemonical declarations advanced during the last Pan-American conferences.

In the summer of 1940, the principles laid down in the Monroe message of 1823 were approved by the virtually unanimous vote of both houses of Congress. In connection with this reaffirmation of the Monroe Doctrine, Secretary Cordell Hull declared that it "contains within it not the slightest vestige of any implication, much less assumption, of hegemony on the part of the United States. . . ." <sup>37</sup> "The principles are at the heart of our creed with regard to foreign policy. There are few subjects, therefore, in American diplomatic history that have so great an importance attested by the immense bibliography of the subject which today exists. There are few which have so great a contemporary significance. The course of events in Europe, the appearance of a new philosophy, perhaps a conquering philosophy, alien to the thought and the interests of the New World, have large implications in terms of the message of 1823. The declaration of President Roosevelt with regard to Canada, the acquisition of new bases in the Caribbean, the conference of Havana to consider the problem of the French and Dutch colonies in this hemisphere, the statement of Herr von Ribbentrop that the United States under the Monroe Doctrine must keep out of Europe if it wishes Europe to keep out of America, all suggest the living interest and the necessity of understanding the full import of the principles laid down by Monroe." <sup>38</sup> "On nothing in the field of foreign policy have the American people been clearer than in their desire to preserve this continent from the aggressions of European powers. . . . The installation of an aggressive foreign power on this side of the Atlantic would be no very lovely thing for anyone; and whether the danger of such installation be great or small, whether it be grossly exaggerated (as some think) or not, it is today present in many minds, and exercises a natural influence toward American solidarity and in the direction of united action for the protection of the safety of the New World." <sup>39</sup>

Triepel sheds new light on the "balance of power" and the principle of "equality of states" as potential legal barriers to the establishment of hegemony. He claims that "an attempt to challenge legally the formation of factual hegemonies would gain strong support if based on the view that rules of general law exist which are more or less opposed to any hegemony. "If such is the case," he continues, "every aspiration for hegemony would be legally prohibited and the establishment of every genuine hegemony

<sup>37</sup> *Department of State Bulletin*, Vol. III, No. 54 (July, 6, 1940); also "The Monroe Doctrine in 1940," *American Journal of International Law*, Oct., 1940.

<sup>38</sup> Dexter Perkins, *Hands Off; A History of the Monroe Doctrine* (Boston, 1941), foreword.

<sup>39</sup> *Ibid.*, pp. 376-379. See also Hanson W. Baldwin, *United We Stand; Defense of the Western Hemisphere* (New York, 1941).

would be considered a crime in the eyes of international law."<sup>40</sup> Whether or not international law actually takes this position requires closer scrutiny.

The conceptions of the so-called "balance of power" and the "legal equality" of states are frequently confused, but should be sharply distinguished. According to Triepel, "balance" means equality of external power, while "legal equality" means equality in possession of rights and in the opportunity of exercising such rights. The demand for legal equality within a community can be submitted only if and in so far as the demand for the existence of a balance of power among the members of the association has not been fulfilled. A demand for legal equality therefore means a demand for equality of rights, notwithstanding an inequality of power. Not even within a state does the principle of "equality of all before the law" mean that all are equal in economic and other social power. Triepel remarks that the same applies in regard to the relation of legal equality in international law to the balance among the states.<sup>41</sup>

However, the principle of "balance of power" does not contain the nonsensical demand that *all* states on earth, or even within a continent, should be equal in political power. Some dreamers may have imagined this, but the notion never became a subject of serious political consideration since it appeared for the first time in the European world of ideas, which was during the time when the powers formed the League of Venice against Charles VIII of France.<sup>42</sup> The difference between large and small, strong and weak, nations cannot be effaced; in this respect, the principle of balance of power has a conservative character. It means, according to the classical formulation provided by Gentz, "that never should one of the members of the European society of states advance to such power that the totality of the remaining states cannot overpower it."<sup>43</sup> "The principle does not contain a command for the distribution of available power, but a prohibition of collecting a superpower over all others. The scale does not strike a balance between one and the other, but between the majority and the strongest in existence at a given time. Basically, the principle thus presupposes the existence of Great Powers. The balance is primarily a balance of the Great Powers. This was always the understanding in European politics."<sup>44</sup>

This fact leads Triepel to the statement that the principle of balance excludes hegemony only to a certain extent. It is not excluded in the rela-

<sup>40</sup> Triepel, *op. cit.*, p. 211.

<sup>41</sup> *Ibid.*, *op. cit.*, p. 212.

<sup>42</sup> Walter Kienast, *Historische Zeitschrift*, Vol. 153 (Munich, 1936), p. 270 *et seq.*

<sup>43</sup> *Fragmente aus der neuesten Geschichte des politischen Gleichgewichts in Europa* (1806; Staatsschriften und Briefe, by v. Eckardt, 1921), Vol. 1, p. 121. Similar statements occur in Chr. Wolff, *Jus gentium* (1759), par. 644 *et seq.*

<sup>44</sup> Triepel, *op. cit.*, p. 212.

tion between a larger and a smaller state. It is also not contrary to the idea of balance if a great power is allied with one or several minor powers. Triepel even believes that hegemony of one great power over another great power is permissible. He cites only one limitation: "the power of the state, which has been increased by combining with one or more follower states, should not grow to such an extent that the totality of the remaining states is no longer in a position to challenge this state and its followers." Thus hegemony over the entire association of nations is specifically excluded. Viewed from the standpoint of balance, even temporary general hegemonies may be the cause of suspicion. The offer made by Louis XIV to lead combined troops against the Turks caused well-founded suspicion in a number of places. Triepel adds that the principle of balance is only a barrier to the hegemony of a single great power. Since the principle is applicable merely among the Great Powers, it does not form a barrier to a "collective" hegemony of the Great Powers over other powers. On the contrary, says Triepel, "the history of the European 'Pentarchy' proves that the purpose of its formation was to guarantee the balance of the states in that continent."<sup>45</sup>

There is no intention of examining critically the question whether or not the principle of balance has been a blessing or a curse to Europe. The settlement of Munich<sup>46</sup> and its aftermath are still in the stage of bitter contest. "So perfectly has the balance-of-power principle operated that each contender for supremacy—Charles V, Louis XIV, Napoleon I, and Imperial Germany—has been eventually thwarted and crushed by armed and alert enemies."<sup>47</sup> Much thought has been given to this principle by National Socialist writers in Germany,<sup>48</sup> emphasizing the fact that "the traditional British balance-of-power policy can no longer fulfill its assigned task" and "that it is the secular duty of the armed might of Greater Germany to wipe out forever this British demand for world domination."<sup>49</sup>

Triepel, however, is more interested in determining whether or not the

<sup>45</sup> Triepel, *op. cit.*, p. 213.

<sup>46</sup> Quincy Wright, "The Munich Settlement and International Law," *American Journal of International Law*, Jan., 1939, pp. 12-32.

<sup>47</sup> Frederick L. Schuman, *International Politics* (New York, 1937), p. 724.

<sup>48</sup> Fritz Berber, *Prinzipien der Britischen Aussenpolitik* (Berlin, 1939), p. 31; W. G. Grewe, "Das Gleichgewichtsprinzip in der Britischen Völkerrechts- und Aussenpolitik," *Monatshefte für Auswärtige Politik*, Feb., 1939; Walter Bargatzki, *Der Sinn der englischen Festlandspolitik* (Munich, 1939); Erich Feldmann, "Das europäische Gleichgewicht," *Deutschlands Erneuerung*, Oct., 1940; Gerhart Jentsch, *Das Ende des europäischen Gleichgewichts* (Berlin, 1940); Ernst Wolgast, "Über die Gesetze der auswärtigen Politik und die Machtauffassung der Staaten," *Zeitschrift für öffentl. Recht*. Vol. XX, No. 3, 1940.

<sup>49</sup> Friedrich Klein, "England und der Grundsatz des politischen Mächtegleichgewichts," *Wissen und Wehr*, Aug., 1940, pp. 289-299. This article contains lengthy citations from Triepel's *Die Hegemonie*.

balance-of-power principle is a barrier to the formation of hegemony. This, he admits, cannot be denied to the extent mentioned above. Occasionally it is also said that it constitutes a legal principle inimical to hegemony.<sup>50</sup> Eliminating all speculation as to natural law, Triepel expresses the opinion that the principle cannot be considered as "general" international law,<sup>51</sup> although it may be a valid legal rule applicable to certain parts of the world, principally to Europe,<sup>52</sup> or to parts thereof.<sup>53</sup> Even this rule could be removed or limited at any time by the free consent of the combined nations. Nobody would venture to say that a union of states comprised of Great Powers and small states is an establishment contrary to international law. It seems customary to state that the principle of balance was "sanctioned" at the big congresses at Münster and Osna-brück, at Utrecht and at Vienna. In reality, however, these significant general acts of European diplomacy were more or less utilized whenever the map of Europe was changed, in order to establish the balance of power as a means for the preservation of peace. Thus, in the Treaty of Utrecht the balance imposed is called a *justum potentiae equilibrium*, and in the Treaty of Chaumont between Austria, Great Britain, and Prussia in 1814 the signatories pledged themselves to oppose France "for the salutary purpose of putting an end to the miseries of Europe" and of "securing its future repose by reestablishing a 'just balance of power'." Thus Triepel infers that the principle of balance is merely a method according to which one endeavors to fulfill a task of political reorientation and to provide the security of a future peace. It is no demand pronounced in the form of a legal rule. No subjective rights or obligations emanate from it, and "violations" of the principle are no breach of formal international law.

Doubtless it is a political regulatory principle of outstanding magnitude.<sup>54</sup> This is well illustrated in Sir Eyre Crowe's memorandum of 1907

<sup>50</sup> Triepel, *op. cit.*, p. 213, n. 38, cites various authorities for comparative purposes.

<sup>51</sup> Luciano Conti, "Die Stellung der Grossmächte in der internationalen Ordnung," *Monatshefte für Auswärtige Politik*, Apr., 1939, p. 308, asserts that the principle of balance describes primarily a political system, but that it is impossible to deny its close relationship with international law. A similar theory has been advanced previously—for instance, by F. Somló, *Juristische Grundlehren* (1917), but it was subsequently abandoned by modern science. Conti considers the time opportune to revive this theory, as has recently been done in H. Drost, *Grundlagen des Völkerrechts* (Munich, 1936), p. 15 *et seq.*

<sup>52</sup> V. Bruns, *Völkerrecht und Politik* (Berlin, 1934), p. 11, refers to a European legal order.

<sup>53</sup> Reference is occasionally made to the balance in the Balkans, or in Eastern or Central Europe. B. E. Schmitt, *From Versailles to Munich, 1918-1938* (Chicago, 1938), p. 41, states: "The interests of all its [Czechoslovakia's] allies were so obviously bound up with the preservation of the state, as the key to the balance of power in Central Europe, that any defection seemed inconceivable."

<sup>54</sup> Triepel, *op. cit.*, p. 214.

on German foreign policy:<sup>55</sup> "The first interest of all countries is the preservation of national independence. It follows that England, more than any non-insular power, has a direct and positive interest in the maintenance of the independence of nations, and therefore must be the natural enemy of any country threatening the independence of others and the natural protector of the weaker communities. History shows that the danger threatening the independence of this or that nation has generally arisen, at least in part, out of the momentary predominance of a neighboring state at once militarily powerful, economically efficient, and ambitious to extend its frontiers or spread its influence, the danger being directly proportionate to the degree of its power and efficacy and to the spontaneity or 'inevitableness' of its ambitions. The only check on the abuse of political predominance derived from such a position has always consisted in the opposition of an equally formidable rival or of a combination of several countries forming leagues of defense. The equilibrium established by such a grouping of forces is technically known as the balance of power, and it has become almost an historical truism to identify England's secular policy with the maintenance of this balance by throwing her weight now in this scale and now in that, but ever on the side opposed to the political dictatorship of the strongest single state or group at a given time." This memorandum is considered by German National Socialist writers as the "root of all evil" in the present conflicts.<sup>56</sup>

We are confronted with a different problem, explains Triepel, when considering the principle of "legal equality" of states. Here no doubt the reference is to a legal principle generally binding upon the states of the entire society of nations, creating rights and obligations. If by "fundamental rights" is meant especially important principles of general international law, legal equality may be considered one of the "fundamental" rights. It will therefore be necessary to determine correctly the scope of application and the contents of this principle.<sup>57</sup> The demand for "legal equality" of the states stands to reason, as far as legal application within the society of nations is concerned. It provides in substance that the generally valid law must be applied in an equal manner to every state to which it may be applicable. "Equality before the law" is demanded in contrast to "legal equality." This, observes Triepel, is recognized even by some of the English writers,<sup>58</sup> otherwise rather skeptical as to "equality" in international

<sup>55</sup> Keeton-Schwarzenberger, *op. cit.*, p. 35.

<sup>56</sup> Giselher Wirsing, "Die wahre Wurzel des Konflikts," *Das XX. Jahrhundert*, Sept., 1939.

<sup>57</sup> Triepel, *op. cit.*, p. 215.

<sup>58</sup> P. J. Baker, "The Doctrine of Legal Equality of States," *British Year Book of International Law*, 1923-24, p. 1. Only a few are stricter in this respect. T. J. Lawrence even assumes a superiority of the Great Powers before the law. *Essays*, p. 230; *ibid.*, *Principles*, p. 245.

law. The same situation as to legal equality will be found in municipal law, inserted as an object of fundamental right in modern constitutions. Notwithstanding all disputes as to the juristic significance of constitutional fundamental rights, agreement appears to exist that constitutions guarantee equality to citizens, at least as far as legal application by the courts and administrative offices is concerned. Necessarily so, writes Triepel, because under such circumstances it refers regularly to the subsumption of equal matters of fact under generally formulated legal rules. In international society, however, the legal application usually takes place by the legal persons themselves to whom these rules apply. The states apply the rules, being guided by the applicable rules of international law, when making demands and concessions or when negotiating or abstaining. Thus the principle of equality before the law, according to Triepel, means that the mutual conduct of states must be performed on the basis of general rules of international law, without consideration of political power relations. The powerful state may not demand any more modifications of existing rights from a less powerful state or grant less to such a state than it would concede to a more powerful one. There exists, in fact, complete equality of states in regard to the application of law.<sup>59</sup> This requires respect for frontiers, for the rights of foreigners, for the extritoriality of legations, and for neutral rights. Equality should be meticulously observed in procedures of arbitration. Speaking generally, Triepel concludes, equality is expressed in such a manner that every state considers every other, even the smallest, equal in its legal personality.<sup>60</sup>

A far different situation exists in respect to equality in legal capacity and power. Triepel points out that one theory, introduced at the end of the eighteenth century under the reign of natural law, with the aid of a wrong analogy from a wrong sentence deduced from the natural equality of all men, and successively adopted from Wolff and Vattel in all textbooks on international law,<sup>61</sup> contends that according to international law, all states are legally equal and that all must possess equal rights. The first statement, Triepel claims, is in open conflict with reality, and if the second were considered correct, all relations pertaining to protectorate, to vassalage, to neutralization, to guarantee, to consular jurisdiction, and to other

<sup>59</sup> James Lorimer, *The Institutes of the Law of Nations*, Vol. I (1883), p. 168: "... the rights of states are equal in themselves, and not merely the right of asserting their rights."

<sup>60</sup> Heilborn, *Das System des Völkerrechts* (1896), p. 305; G. Jellinek, *System der subjektiven öffentlichen Rechte* (1905), p. 319.

<sup>61</sup> The history of the dogma of equality is treated in E. D. Dickinson, *The Equality of States in International Law* (1920), pp. 3-152; Goebel, *The Equality of States* (1923). See also Arnold D. McNair, "Equality in International Law," *Michigan Law Review*, Dec. 1927; Payson S. Wild, "What Is the Trouble with International Law?," in this REVIEW, June, 1938, pp. 478-494.

familiar international institutions would have to be condemned as contrary to international law. Actually, international law grants equality before the law, not equality *in* law,<sup>62</sup> declares Triepel. If the majority of writers, some declarations of international institutes,<sup>63</sup> or occasionally diplomatic declarations,<sup>64</sup> contend or demand the contrary, it is either the outlet of "theoretical pacifism,"<sup>65</sup> or a diplomatic tactic, or the expression of an exaggerated demand for distinction by states of second or third rank, which cheerfully adopted the rule in order to prevent being overlooked or experiencing disadvantages in case of invitations to international congresses or appointments in international organizations.

Triepel asserts that international law grants equality to states only in the same sense that equality is granted to citizens according to the fundamental legal rules incorporated in constitutions of the states; that is to say, in the sense inherent in the idea of justice, namely, that whatever deserves equal treatment should be entitled to equal treatment. Relative, not absolute, equality should be granted to all. Justice does not require that an *idem cuique* be applied, but merely a *suum cuique*.<sup>66</sup> Furthermore, while the constitutional principle within a state should be used as a guide and barrier in the "ordinary" process of legislation in such a manner that unconstitutional laws should be voided, the states, when creating particular international law, which has its origin in the free wills of those bound, should have full liberty to decide whether or not they desire to observe or cast aside the idea of equality. No state is legally obliged to recognize the effectiveness of a new rule of international law or of a new international institution to which it has not explicitly or tacitly subjected itself. Thus,

<sup>62</sup> Of the same opinion, among others, Pillet, *Revue générale de droit international public*, Vol. 5 (1898), p. 70 *et seq.*; Hicks, in *American Journal of International Law* (1908), Vol. 2, p. 530 *et seq.*; Brown, *ibid.*; Vol. 9 (1915), p. 326 *et seq.*; Somló, *op. cit.*, p. 156; Bilfinger, *Zeitschrift für ausl. öffentl. Recht und Völkerrecht*, Vol. IV (1934), p. 481.

<sup>63</sup> For example, the Declaration of the Rights and Duties of Nations, adopted by the American Institute of International Law in 1916, states in Article III: "Every nation is *in* law and *before* the law the equal of every other nation belonging to the society of nations." *American Journal of International Law*, Vol. X (1916), p. 125.

<sup>64</sup> In reply to the German peace security memorandum of March 31, 1936, the French government on April 8, 1936, formulated its standpoint and under item 1 demanded: "La base première des relations internationales doit être la reconnaissance de l'égalité de droit et de l'indépendance de tous les états . . .," and under items 5 and 7 proposed the elimination of "hegemony." *Le Temps*, Apr. 9, 1936. Presumably this elimination refers to "legal" and not to "factual" hegemony.

<sup>65</sup> M. Huber, *Zeitschrift für Völkerrecht*, Vol. 12 (1923), p. 10. Still more outspoken is Mussolini, who in a speech on November 1, 1936, called it "*un assurdo*," a great illusion, a conventional lie. *Giornale d'Italia*, Nov. 3, 1936.

<sup>66</sup> Lorimer, *op. cit.*, Vol. II, p. 260 n.



according to Triepel, international relations of dependence<sup>67</sup> such as protectorates, financial or other controls, also the classification of nations in international intercourse, are not *exceptions* to the principle of equality; they are applications of the correctly comprehended principle of equality. The same applies to all rights of influence and obligations of alliance in international associations, in unions of states, and in similar arrangements. "There is no equality of influence in regard to the formation of concrete political relations."<sup>68</sup>

The methods, direct or indirect, under which hegemonical politics operate, are, like all means of influence, so multiform that it is practically impossible to incorporate them within a definite system.<sup>69</sup> Hegemony is always a means of integration. The weakest, but usually immediately effective, means consists in warnings; the strongest hegemonical means of influence is intervention.

Triepel states, in conclusion, that international law offers no general barrier to the development of hegemony—at least, not a hegemony of a genuine kind, that is, one which was created through leadership by a larger power on the basis of voluntary consent by the follower state. Certainly a subjugation by force is contrary to international law.<sup>70</sup> Genuine hegemony, however—that is, leadership and following combined on the basis of consent—is "after all, still in compliance with international law." This applies to legalized hegemonies, and not less to factual hegemonies. The factual hegemony of the Great Powers, which is said to have furnished

<sup>67</sup> Aside from Dickinson, *op. cit.*, Chap. VII, on "External Limitations upon the Equality of States," see also for the frequent and varied application of these institutions of international agency the recent study by Angelo Piero Sereni, "Agency in International Law," *American Journal of International Law*, Oct., 1940, pp. 638-660. The same author discusses "The Legal Status of Albania" as an example of hegemony, in this REVIEW, Apr., 1941, pp. 311-317. Triepel's *Die Hegemonie* is repeatedly referred to by Wilhelm G. Grewe, in "Protektorat und Schutzfreundschaft," *Monatshefte für Auswärtige Politik*, Apr., 1939, dealing principally with the protectorate of "Bohemia and Moravia" and the "protective friendship" of Slovakia.

<sup>68</sup> M. Huber, in "Rechtswissenschaftlichen Beiträgen," *Juristische Festgabe des Auslandes für J. Kohler* (1909), p. 106.

<sup>69</sup> Triepel, *op. cit.*, discusses these methods in detail on pp. 218-240.

<sup>70</sup> "Effective law is impossible without some basic standards held in common by a substantial majority of those subject to it. Totalitarianism both in principle and practice rejects all standards above the legislation of the totalitarian government. Governments professing such a doctrine cannot be reliable subjects of law, and for this reason international law has always been a weak law. When governments practice such professions, international law disappears altogether. The relation of totalitarianism to international law is therefore one of incompatibility. If totalitarianism triumphs in the present war, international law will suffer a severe decline from which it may not recover." Quincy Wright, "International Law and the Totalitarian States," in this REVIEW, Aug., 1941, pp. 738-743.

step by step an "aristocratic character" to the state system,<sup>71</sup> was not a development contrary to international law.<sup>72</sup> Even the most ardent defenders of the idea of equality have admitted this fact: "Great Powers are the leaders of the Family of Nations."<sup>73</sup>

CHARLES KRUSZEWSKI.

*Chicago, Illinois.*

**The Status of Croatia under International Law.** On April 7, 1941, while the Axis Powers were invading Yugoslavia, Ante Pavelik, the well-known Croat terrorist, broadcast from Italy an appeal to the Croats to secede from the Serbs and to support Germany and Italy. Three days later, when the German troops entered Zagreb, Sladko Kvaternik, another Croat leader, proclaimed there an independent Croat state, and on April 12, a national committee declared Pavelik, who was still abroad, head of the new state. The following day he entered Zagreb, and two days afterwards he took effective power, receiving the title of *Poglavnik*, the Croat equivalent of *Führer* or *Duce*. Immediately upon his telegraphic request of April 15, Germany and Italy granted recognition of Croatia, subject to their joint determination of the new state boundaries. Pavelik at once dissolved the old political parties and on April 17 formed the first Croat government, in which he became president of the council of ministers and minister of foreign affairs; Kvaternik, his substitute and supreme commander of the armed forces; and a Dr. Kulenovich, vice-president of the council. An upper council of the Croat state was designated to function with the government.

Then followed a series of acts affecting the international status of Croatia. Recognition by Hungary followed that of Germany and Italy immediately. Shortly afterwards came recognition by Slovakia (April 16), Bulgaria (April 22), Rumania (May 7), and Japan (June 7). Croatia promptly exchanged diplomatic representatives with Germany, Italy, Slovakia, and Hungary. On June 16, the Spanish minister of foreign affairs announced that Spain would recognize Croatia promptly and establish a legation in Zagreb. But the Holy See ostentatiously refrained from any act which might be construed as recognition.<sup>1</sup> Under-Secretary Sumner Welles, for the United States, in acknowledging receipt of two protests of the Yugoslavian government, on May 12 and 24, against the dis-

<sup>71</sup> Heinrich v. Treitschke, *Politik*, 5th ed., Vol. I (1922), p. 42.

<sup>72</sup> Triepel, *op. cit.*, p. 218.

<sup>73</sup> L. Oppenheim-Lauterpacht, *op. cit.*, p. 224.

<sup>1</sup> See official notes published May 19, 1941, in the Vatican newspaper, *L'Osservatore Romano*, pointing out that the Pope had received the Duke of Spoleto, the day before his elevation to the throne of Croatia, Pavelik, and a Croat delegation in their private and not in their official capacities. The attitude of the Holy See is politically important since the great majority of the Croat people are Catholic.

memberment of Yugoslavia and the creation of Croatia, declared May 28 that he wished to "reiterate the indignation of the government and of the American people at the invasion and mutilation of Yugoslavia by various members of the Tripartite Pact."<sup>2</sup>

The boundaries of the new state were determined only after its recognition on the part of the neighboring states. In fact, the boundary between Croatia and Germany, which annexed the Yugoslavian portions of Carinthia and Styria, was established only by agreement of May 13; the frontiers between Croatia and Italy, which annexed from Yugoslavia the larger part of Slovenia and Dalmatia, were fixed by agreement of May 18.<sup>3</sup> Apparently no formal agreement was concluded for the determination of the boundary with Hungary, whose troops, on April 10, occupied Yugoslavian territory, including the Banat of Batchka and Baranya, between the Tisza and Drava rivers.<sup>4</sup> The southeastern frontier of the new state was determined June 7 by a decree of Pavelik, reestablishing between Croatia and the territories of southern Yugoslavia the frontier which had existed, 1908 to 1918, between Bosnia, now enclosed in the new state, and Serbia.<sup>5</sup> On October 27, 1941, a treaty fixing the frontier between Croatia and Montenegro, the new puppet state that Italy is attempting to rule, was signed in Zagreb by Italian and Croat officials. Thus the new Croatia contains approximately 115,000 sq. kms., with an estimated population of five to seven millions.

Meanwhile the internal structure of the new state was taking more definite shape. On May 14, the Croat council of ministers issued a decree reestablishing the kingdom of Croatia, extinguished in 1097. Two days later the council requested the king of Italy to designate a prince of the house of Savoy as king of the new state; and on May 19, Victor Emmanuel so designated his nephew, Aimone of Savoy-Aosta, duke of Spoleto. The same day, immediately after the proclamation of the new king in Rome,

<sup>2</sup> The Yugoslav notes and the reply of Under-Secretary Welles are published in *Dept. of State Bull.*, IV, No. 102, June 7, 1941, pp. 682-863.

<sup>3</sup> Agreements were signed in Berlin on July 8, 1941, for determination of the boundaries between the Yugoslav territories annexed by Germany and Italy.

<sup>4</sup> On July 27, 1941, the *New York Times* reported that differences had arisen between the Croat and Hungarian governments over boundary lines fixed by the Hungarian army, and that the Hungarian government had failed to reply to a Croat protest on the matter.

<sup>5</sup> Obviously this decree, being a domestic and unilateral act of the Croat state, has no binding force on the neighboring state. But since the territories adjoining southern Croatia are under the control of Germany and Italy, who claim that they can dispose of them freely, and since Croatia is under Axis control and thus would not have done an act contrary to their interests and wishes, it may reasonably be inferred that the Croat decree determining the boundary is the expression of a previous understanding between Croatia and the Axis Powers determining the boundaries in that part of Europe.

the heads of the two governments, Mussolini and Pavelik, signed the following agreements: (1) a treaty for the delimitation of the boundaries between Italy and Croatia;<sup>6</sup> (2) an agreement on questions of military character concerning the Adriatic shore; and (3) a treaty of guarantee and collaboration.

The birth of the Croat state gives rise to several questions of international law.

(1) A realistic consideration of the events accompanying the formation of the new kingdom can lead only to the conclusion that the new state owes its creation exclusively to the action of Germany and Italy. The new Croat régime is nothing more than a subservient government which the Axis set up on part of the territory of Yugoslavia occupied in the course of military operations against the latter. It is a well-established principle of international law that during a war a belligerent does not acquire sovereignty of enemy territory under military occupation. The action of Germany and Italy in thus disposing of Yugoslavian territory by the creation of Croatia can be considered lawful only on the assumption that their war against Yugoslavia was ended by the extinction of the latter. This assumption, however, does not seem to be justified by the events. Even if it were proved that the Yugoslavian territory is controlled by the invading troops and that the internal organization of Yugoslavia has been seriously disrupted, it is submitted that these facts would not suffice to produce the extinction of that state. In fact, the military operations of the Axis Powers against Yugoslavia are not an autonomous and isolated war. They are only episodes of a larger war in which several states allied to Yugoslavia participate, and this war still continues.

Thus the extinction of Yugoslavia as a consequence of war cannot be accepted until the final outcome of the conflict. The organization of the Yugoslavian state, moreover, is not entirely destroyed. Some of the highest officers, including the king, still act in an allied country as a Yugoslavian government, which is said to exercise its authority over units of the Yugoslavian armed forces still fighting at the side of their allies. The refusal of the United States to recognize the dismemberment of Yugoslavia and the formation of the Croat state thus appears justified not only on moral and political but on strictly legal grounds as well.

<sup>6</sup> Italy acquires the districts of Castua, Sussak, Cabar, and part of the district of Delnice; the most important tracts of the Dalmatian shore, including almost every port up to Cattaro; the larger part of the Dalmatian islands; and the whole province of Lubiana. The new Croat state has only two ports of any importance: Porto Re and Ragusa. Its maritime communications depend strategically and economically on Italy. Italy has granted a special administration to the newly acquired province of Lubiana, whose population is mainly Slovene (Royal Decree Law, May 4, 1941) and to the provinces of Zara, Spalato and Cattaro, whose population, apart from the cities, is predominantly Croat, and which have been grouped together in the "Governatorato" of Dalmatia (Royal Decree Law, May 20, 1941).

(2). The international status of Croatia, at the moment in which "it first becomes a part of the new European order,"<sup>7</sup> is especially affected by its relationship with Italy. The treaty of guarantee and collaboration, which is to last twenty-five years, provides that Italy shall guarantee the political independence and territorial integrity of Croatia (Art. 1), which is bound not to contract any obligations incompatible with such guarantee and with the spirit of the treaty (Art. 2). The two countries are to enter into fuller and closer relationship ("*nelle più ampie e strette relazioni*") in customs and currency affairs, and for this purpose will establish a permanent commission (Art. 4). They are to enter into agreements concerning railway and maritime traffic, the reciprocal treatment of their citizens, legal and cultural relations, and other matters of common interest (Art. 5).<sup>8</sup> The Croat government will avail itself of Italian collaboration for the organization and the instruction of its armed forces and for the preparation of the military defenses of the country (Art. 3). Military problems, however, are particularly dealt with in the military agreement, of an unlimited duration. It provides that the Dalmatian shore and islands of the Croat state shall not be fortified (Art. 1); that Croatia shall not have a navy, except for specialized units necessary for police and customs services (Art. 2); that Italy shall have the right of transit for its troops on the littoral highway, Fiume to Cattaro, and on the railroad, Fiume to Ogulin to Spalato, and on its possible prolongation to Cattaro, according to details to be worked out in a future agreement (Art. 3). To complete the arrangements, a special convention is to be concluded, regulating the administration of the city of Spalato, of its neighboring sections, and of the island of Curzola—territories which, though having a predominantly Slavic population, have been assigned to Italy.<sup>9</sup>

(3). The provisions of the treaty of guarantee have established an international union between Italy and Croatia aimed at the satisfaction of common interests in political, economic, monetary, legal, cultural, and military affairs, through "an intimate reciprocal collaboration."<sup>10</sup> The dominant position within the union is granted to Italy in the provision whereby she guarantees the political independence and the territorial integrity of Croatia. The Italian leadership is confirmed in the provisions which grant to Italy control of the military organization of the Croat state for twenty-five years and the right of transit of troops forever

<sup>7</sup> The phrase is used in the preamble of the treaty of guarantee and collaboration with Italy.

<sup>8</sup> A final protocol to the treaty provides that until the conclusion of new agreements, the treaties between Italy and the "former Kingdom of Yugoslavia" will be in force between Italy and Croatia, as far as this is compatible.

<sup>9</sup> An exchange of letters between Mussolini and Pavelik of May 18, 1941, provides that guarantees may be agreed upon in this convention for the protection of the Italian minorities on the Dalmatian shores and islands of Croatia.

<sup>10</sup> The phrase is used in the preamble of the treaty.

through certain Croat ways of communication. The manner in which the boundaries have been delimited and the obligation of Croatia neither to have a navy nor to fortify certain parts of her territory have put the new kingdom in a position of complete military dependence on Italy.

The union between Italy and Croatia has no legal machinery of an institutional character aimed at coördinating in a general and permanent manner either the internal or the international activities of the two countries. In Italy's union with Albania, such coördination does exist, and finds its legal foundation in a series of international acts and of domestic measures unifying the management of many affairs of the two countries and entrusting Italy with full control over Albania. The principal devices adopted in order to reach this result are: the identity of the head of the two states, the Albanian crown having always and only to be vested in the head of the Italian state; Italy's international representation of Albania, the former controlling the foreign affairs of the latter; the establishment of a lieutenant-general for Albania, an Italian who is also an Albanian officer, through whom Italy directs the whole political, administrative, and legislative life of the Albanian state; the formal acceptance by Albania of the political régime existing in Italy and subordination to the Italian fascist party of the Albanian fascist party, through which Italy regiments the Albanians and controls their political allegiance; and, finally, the incorporation of the Albanian army into the Italian.<sup>11</sup>

The legal ties between Italy and Croatia are much less close. Apparently Croatia enjoys a much larger degree of independence. The designation of the king of Croatia by Victor Emmanuel, significant as it may be from the political point of view as denoting the subordination of the new kingdom to Italy, is irrelevant for international law. In fact, it can hardly be considered an act of the Italian state, being more properly an act performed by Victor Emmanuel in his personal capacity, productive of consequences for the Croat, but not for Italian, public law. There does not seem to be any legal obligation of the Croat state to have at its head, now or in the future, a person designated by Italy or by her king. The international relations of the Croat state are carried on through its own agencies, without any preëstablished and permanent form of control on the part of Italy. No limitation on the management of its international relations derives from the treaty of guarantee and collaboration with Italy, apart from the above-mentioned obligation of Croatia not to contract any obligations incompatible with the Italian guarantee and with the spirit of the treaty. This provision presumably binds Croatia not to consent to any cession of territory or limitation of her sovereignty in favor of states other than Italy, and not to contract agreements restricting her political independence<sup>12</sup> or inconsistent with her ties with Italy.

<sup>11</sup> For more detailed information, see Sereni, "The Legal Status of Albania," in this REVIEW, Vol. 35, pp. 311 ff.

As to military relations, while Italy is obliged to defend Croatia, and practically has military control over the country, there is no military alliance and Croatia does not appear to be bound to coöperate in military enterprises of Italy.<sup>13</sup> The internal organization of the two countries is completely separate: Italy has no right to interfere with the domestic affairs of Croatia, except as required by the military provisions; nor is there any obligation on the part of Croatia to conform its constitutional organization to that of Fascist Italy.

(4). But the apparent independence that these provisions leave to Croatia is intended only to appease the susceptibilities of the Croat people. Full *de facto* control results from the particular measures aimed at securing the "intimate reciprocal collaboration" of the two countries. As indicated, Italy has full military dominance over the country. Italian troops are still stationed on the Croat territory.<sup>14</sup> The mixed commission provided for in Art. 4 of the treaty of guarantee and collaboration, and created immediately after the signature of that treaty, is presided over by an Italian; and its work has resulted in a series of special agreements which make of Croatia a financial, economic, and commercial complement of Italy. Agreements have been entered into for the issuance of a Croat currency, called *kuna*, which will have a fixed rate of exchange with the Italian lira. In the meantime the rate of exchange of the Yugoslavian currency, still in force in the Croat territory, has been arbitrarily fixed at a rate favorable to Italy. The agreements concerning railway traffic tend to direct the largest part of Croat exports toward Italian ports. Croatia will practically have no merchant marine; even the local traffic between the Croat shores and islands will be carried by Italian lines. Exploitation of water power and construction of roads in Croatia will be effected with the assistance of Italian capital and technicians.

Another manifestation of the intimate collaboration between the two states which illustrates the subordination of Croatia is seen in the acceptance on her part of the political and constitutional doctrines of Italian Fascism. The internal structure of the Croat state is not yet entirely defined. However, Virginio Gayda, who is considered the mouthpiece of the head of the Italian government, wrote May 20 in the *Giornale d'Italia* that "the identity of political aims of the two states will find its intimate con-

<sup>12</sup> Thus Croatia could not be a member of the League of Nations without Italy's consent.

<sup>13</sup> Croatia is not at war with Russia, although Italy is.

<sup>14</sup> This is made clear by an order of the day issued by Mussolini on May 19, the day after the signature of the Italo-Croat treaties, stating that "the Italian armed forces now on the territory of the independent state of Croatia cease as of tomorrow to possess the character and prerogatives of an army of occupation and assume the character of troops stationed on the friendly and allied territory of the kingdom of Croatia." By agreement with the Croat government, German troops will be stationed in the city of Zemun, on the Southern bank of the Danube, for the duration of the war.

firmation in the identity of political forms and institutions, which the new Croat state intends to construct similar to Fascism, i.e., a single totalitarian party, a corporative régime, emphasis on agricultural policy, and racial intransigence." From a strictly legalistic point of view, the adoption of such a totalitarian régime represents the choice of the organization they think fit for the Croat people by some national leaders purportedly acting for it. On the contrary, this régime, which certainly does not correspond to the traditions, nor probably to the wishes, of the country, has been actually imposed by Italy partly for ideological reasons, but above all because it permits Italy to control easily the whole political life of Croatia. The existence of a totalitarian and authoritarian régime, in which every power comes from above and is concentrated in a few key men, permits Italy, through control of the leaders, like Pavelik and Kvaternik, to dominate the entire machinery of the Croat state.<sup>15</sup>

Thus the subordination of Croatia is not accomplished through legal measures, having a general and permanent character and expressly providing for such a result. Actually, it results indirectly from separate agreements on particular questions, and even more through *de facto* situations which practically give Italy the almost complete control of the whole internal and international life of the Croat state.<sup>16</sup> The relationship between Italy and Croatia can be defined as a *de facto* protectorate, very similar to the protectorate existing *de jure* between Germany and Slovakia, both in the powers given to the protecting state and in its practical results.<sup>17</sup>

<sup>15</sup> The government-controlled Italian press and the heads of important Fascist organizations make it clear that the Croat frontiers have been delimited with special regard to the strategic needs of Italy (see Gayda in *Giornale d'Italia*, May 20 and 21, 1941); that the new kingdom is included within the Italian sphere of influence (Ansaldo in *Il Telegrafo*, May 18, 1941); and that the economy of the new state is destined to become only an accessory of Italian economy (speech of the president of the Fascist Federation of Tradesmen, in *Il Sole*, June 1, 1941).

<sup>16</sup> Both Pavelik and Kvaternik took refuge in Italy after the murder of King Alexander of Yugoslavia in Marseilles (October 9, 1934), in which they were accused of having taken direct part. The judgment of the Court of Appeals of Turin, November 23, 1934, refusing their extradition, which had been requested by the French government, is published in *Foro Italiano*, 1935, Sec. II, p. 20. It has been repeatedly affirmed since the assassination that Pavelik and Kvaternik are in the pay of the Fascist government.

<sup>17</sup> This treaty provides that the Reich shall undertake to protect the political independence of the Slovakian state and the integrity of its territory (Art. 1); that for the execution of that protection German armed forces may be stationed in certain zones of the Slovakian state, where they will enjoy special privileges and may erect military plants (Art. 2); and that the Slovak government will organize its own military forces in close coöperation with the German government (Art. 3). Corresponding to the relationship of protection agreed upon, the Slovak government will conduct its policy in close coöperation with the German government (Art. 4). (Croatia,



(5). The peculiar status of the kingdom of Croatia gives rise to a question as to whether it might be considered a real subject of international law. There is no doubt that the new state is vested with all of the formal characteristics of an international person: it has a territory, a population, and a complete political, economic, and social organization, including its own agencies for foreign relations, an army, and a bank of issue. The new state has undergone the whole international ceremonial: it has been recognized by several states and has even recognized on its part the Japanese puppet-state of Nanking; it has concluded international agreements of a political, economic, and currency nature on matters of labor, and for the determination of its boundaries; and finally has been admitted solemnly into the Axis (June 15). But in reality Croatia is hardly more than a legal fiction in view of its subordination to Italy, of which it constitutes an appendage from the political, economic, and strategic points of view.<sup>18</sup> Therefore, even if it is maintained that Croatia is a subject of international law because it has some international rights and duties, it must be recognized that those rules of international law do not find application to it which presuppose actual equality with other states and internal and international independence. It could hardly be maintained that Croatia, even when not taking an active part in hostilities, may claim to be treated as a neutral by a state at war with Italy. On the other hand, special international obligations toward third states may result for Italy by reason of her control over Croatia. In case of international wrongs committed by Croatia against third states, Italy may be held jointly liable if the act is within her sphere of control; if Croatia should be considered a state successor of Yugoslavia, the duties therefrom falling upon her would also fall upon Italy, for whose benefit Croatia actually exists. These are some of the problems to which the birth of the new kingdom gives rise. Croatia, together with Slovakia and Albania, probably foreshadows the new type of Axis-controlled totalitarian state that the Axis Powers would create in various parts of Europe, should they succeed in establishing their hegemony on that continent. A general reconsideration would in that situation be necessary concerning the limits within which the traditional rules concerning the subjects of international law would find application to these puppet states.

ANGELO PIERO SERENI.

*New York City.*

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on the contrary, is only bound not to contract obligations incompatible with the Italian guarantee.) Germany is not legally entitled to interfere with the domestic affairs of Slovakia. The Slovakian constitutional law of July 21, 1939, has, however, established a Fascist régime, and all the key men are persons of proved devotion to Germany.

<sup>18</sup> Following the Italian example, Croatia on June 22, 1941, requested the United States to close immediately its consulate in Zagreb.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

*Compiled by the Managing Editor*

Professor David P. Barrows is on semi-sabbatical leave from the University of California this semester, and Professor Eric C. Bellquist is in the meantime serving as chairman of the political science department.

Dr. Herman Finer, of the London School of Economics and Political Science, who was to have served as visiting professor at the University of Michigan during the first semester, was recalled to England in October.

Professor Ralston Hayden, on leave from the University of Michigan, has been appointed a member of the Board of Analysts in the federal Office of Coördination of Information.

Professor William Anderson, of the University of Minnesota, has been elected president of the Minneapolis Research Bureau, an affiliate of the Minneapolis Civic Council. The Bureau is organized for research in problems affecting the welfare of the city, including matters of government, taxation, and administration.

Dr. Harold D. Lasswell is continuing a second year as chief of the Experimental Division for the Study of War-Time Communications, at the Library of Congress, and would be glad to be informed of research studies in progress in the field of crisis communication.

Professor Frank M. Stewart, director of the bureau of governmental research at the University of California at Los Angeles, was elected president of the Western Governmental Research Association at that organization's meeting at Sacramento in October.

Professors John A. Fairlie, of the University of Illinois, Roger Shumate, of the University of Nebraska, and Carl M. Frasure, of West Virginia University, were delegates to the thirty-fourth annual conference of the National Tax Association in St. Paul, October 13-16. Professor Fairlie also lectured to the graduate seminar in public administration at the University of Minnesota.

Professor A. N. Christensen, of the University of Minnesota, was a member of the lecture staff of two schools held under the auspices of the Division of Program Study and Discussion of the U. S. Department of Agriculture at Spokane, Washington, October 27-31, and Portland, Oregon, November 3-6.

Mr. Henry N. Williams, who recently completed his work for the doctorate in public administration at the University of Chicago, has been

added to the staff at Vanderbilt University, and is giving half his time to the new Institute of Research and Training in the Social Sciences.

Professor H. Schuyler Foster, of Ohio State University, was at the University of West Virginia during the second term of the summer quarter. Earlier in the summer, he was a member of the War Communications Research Division of the Library of Congress.

Dr. Max Ascoli, dean of the Graduate Faculty of the New School for Social Research, has been appointed associate director of cultural relations of the Committee for the Coördination of Commercial and Cultural Ties Between the American Republics. During his year's leave of absence, his position on the Graduate Faculty is being filled by Dr. Hans Simons.

Dr. Pitman B. Potter is engaged upon a research project at the Brookings Institution, and in the autumn will assume the chairmanship of the department of political science at Oberlin College, succeeding Professor Oscar Jászi, who at that time will retire from active teaching.

Professor Harvey Walker, of Ohio State University, has been called to active duty as a captain in the Finance Department of the U. S. Army, and has been given leave of absence from the University for a year, although he will continue to supervise the work of his present graduate students. He is assigned to duty as assistant finance officer in the Finance Office, U. S. Army, Columbus, Ohio.

Professor William B. Ballis has received a year's leave from Ohio State University to work in Washington in the national defense program. Going first as Russian and Far Eastern expert in the Office of the Administrator of Export Control, he has subsequently been transferred to the Office of Production Management, where he is senior liaison officer for Russia and China. Professor Ballis' place at Ohio State is being filled this year by Professor James T. Watkins IV, recently of the University of Chicago.

Professor Amry Vandenbosch, of the University of Kentucky, has been granted leave of absence to become an associate in the Division of Special Information, Office of the Coördinator of Information, at Washington. During Professor Vandenbosch's absence, Professor J. B. Shannon is acting head of the political science department at Kentucky.

The Connecticut Valley Political Science Association has agreed to meet in Amherst, Massachusetts, next spring, with Massachusetts State College and Amherst College acting as hosts.

Professor Frank M. Russell, of the University of California, has taken a semester's leave in order to engage in research and writing.

At the University of Missouri, Dr. William L. Bradshaw has been advanced to a full professorship; and at Hamilton College, Dr. Henry Janzen to an associate professorship.

Miss Sarah G. Blanding has resigned her associate professorship of political science at the University of Kentucky to accept an appointment as director of the School of Home Economics at Cornell University.

Dr. Alexander T. Edelmann, of the University of Tennessee, has been appointed assistant professor of political science at the University of Kentucky.

Dr. Edward George Lewis has been appointed instructor in government at the University of Texas, and Mr. Paul Kelso at Ohio State University.

Recent recipients of the doctor's degree at Ohio State University are Robert Robbins, instructor at Tufts College, and Ceph L. Stephens, instructor at Ohio State.

At the University of Virginia, Dr. Alfred Fernbach, who received his degree at the University of Wisconsin last June, is substituting for Professor R. K. Gooch during the latter's period of service in connection with the national defense program.

Dr. Angus M. Laird, assistant professor in the department of history and political science at the University of Florida, has been appointed merit system supervisor of the merit system of the Florida state board of health and the crippled children's commission.

Senator Gaetano Mosca, eminent teacher of political theory and public law at the Universities of Palermo, Turin, and Rome, and author of many scholarly works, died at Rome on November 9 at the age of eighty-three. An English translation of his well-known *Elementi di Scienza Politica*, prepared by Professor Arthur Livingston, of Columbia University, and bearing the title, *The Ruling Class*, was published at New York in 1939.

An institute of Pan-American relations will be held at Drake University, December 5-6. Among persons who will participate are Professors J. Fred Rippey, University of Chicago, and F. W. Schultz, Iowa State College; Dr. Wallace McClure, U. S. Department of State; and Senor Gonzalo Macias, agricultural attaché of the Mexican Embassy.

Professor Stuart A. MacCorkle, of the University of Texas, has been granted leave of absence for the present academic year, and has been awarded a research fellowship by the University Research Institute. He likewise is serving as visiting educational counsellor at the National Institute of Public Affairs in Washington, D. C. Professor Charles A. Timm is also on leave during the first semester and is working under a grant from the University Research Institute.

The annual series of lectures at Berkeley, sponsored by the President's Committee on International Relations, University of California, was this year entitled "Problems of Hemispheric Defense." The panel of lecturers included Professors John B. Condliffe, William H. Alexander, Russell H. Fitzgibbon, Baldwin M. Woods, and Herbert I. Priestley.

In August, Professor Edward F. Dow, of the University of Maine, was appointed by Governor Sewall chairman of the state personnel board, separated under a legislative act of 1941 from the department of finance. Formerly the budget officer was *ex officio* chairman of the board.

Mr. James O. Overby has resigned an assistantship at the University of Kentucky to accept appointment to an instructorship at Indiana University.

Mr. W. Crafton Nealley, formerly with Central Washington College of Education, has been appointed to an instructorship at Syracuse University.

Mr. Leroy Ferguson has been appointed instructor in the division of political science at the Florida State College for Women.

Mr. Norman Beck, who received his doctorate at the University of Chicago last summer, has been appointed to the department of political science in the School of Business of New York University.

Dr. Karl A. Bosworth has resigned his position with the bureau of public administration at the University of Alabama to accept the position with the Illinois Legislative Council recently vacated by Dr. Gilbert G. Lentz.

At Dartmouth College, Mr. John Pelényi, former minister to the United States from Hungary, has been appointed visiting lecturer, with the rank of professor of political science, for the current academic year, and Dr. Bernard Brodie, formerly of the Princeton Institute for Advanced Study, has been appointed instructor. Professor Harold J. Tobin has succeeded Professor Hugh L. Elsbree as chairman of the department.

Professor David Y. Thomas, lately retired at the University of Arkansas, has been serving as visiting professor at the University of Texas during the first semester of the present year. Professor A. R. Hatton, of Northwestern University, will serve in the same capacity during the second semester. Professor Thomas is teaching courses in international politics and international law; Professor Hatton will conduct courses in municipal government and American political issues.

Dr. W. O. Scroggs, formerly with the Council on Foreign Relations, has been appointed dean of the Graduate School at Louisiana State University and will have charge of the undergraduate course in American diplomacy and international relations formerly conducted by Dean Charles W. Pipkin.

Professor Philip H. Taylor is on leave from Syracuse University, and is serving in the Intelligence Division of the War Department at Washington. To the resulting vacancy in the field of international affairs, Professor W. Lonsdale Taylor, recently returned from study in Mexico, has been appointed.

At the University of Oregon, Professor James D. Barnett, head of the department of political science for thirty-three years, has been made professor emeritus, and Professor William C. Jones, formerly of Willamette University, has been named as his successor. Dr. Herman Kehrli has been promoted to an associate professorship, and Dr. Fred V. Cahill, who received his degree at Yale in June, has been appointed instructor.

At the University of Kentucky, Professor E. G. Trimble has been made acting director of the bureau of government research for the current year, and Mr. John E. Reeves has been promoted from instructor to assistant professor.

Mr. Dale Pontius has become an associate planning editor under the National Resources Planning Board and is occupied with a study of industrial location as related to national defense.

Dr. Albert Lepawsky is director, and Professor Leonard D. White chairman of the advisory committee, of the Institute of Public Service recently established by the University of Chicago and described briefly in the preceding issue of this *Review*.

At Seattle, early in November, the Bureau of International Relations presented Professors Graham H. Stuart, of Stanford University, and L. B. Simpson, of the University of California, in a symposium on Latin American affairs.

An all-university study of the Louisiana state revenue system is under way at Louisiana State University under the direction of Professor Jefferson B. Fordham of the law faculty. Eight departments of teaching and research are associated in the undertaking. Mr. Donald H. Morrison, instructor in government and associate in the bureau of government research, is giving half time to the project, and Professor Charles S. Hyne-man, director of the bureau of government research, is a member of the coordinating committee set up to supervise the study.

The Third Annual Conference on Governmental Problems, held at Marshall College on October 22, was devoted to the subject, "Government and Labor," with Dr. Marshall E. Dimock, U. S. Department of Justice; Robert J. Watt, A. F. of L. representative, National Defense Mediation Board; Philip G. Philips, director, National Labor Relations Board,

Ninth District; Charles J. Sattler, commissioner of labor, state of West Virginia; John B. Easton, West Virginia Industrial Council (C. I. O.); and other state and local labor and government leaders participating. Professor Conley H. Dillon, chairman of the department of political science, served as chairman of the committee on arrangements.

At Louisiana State University, Professor Charles S. Hyneman has been relieved of his teaching duties for the current year so that he may assist in the work of the newly created department of state civil service. The University's bureau of government research has been asked to lay the groundwork for a program of public service training and to undertake certain duties in connection with the classification of state employees, and Dr. Hyneman has been given the title of supervisor of classification and public service training in the civil service department. Professor Robert J. Harris has been appointed head of the department of government at the University for the current year.

The Southern Institute of Local Government, which on October 17 and 18 held its second meeting at the University of Tennessee, has been organized permanently with a directing committee under the chairmanship of Mr. Frank Ahlgren, editor of *The Commercial Appeal* of Memphis, Tennessee. This year's meeting was devoted to problems of local finance. The principal speakers included Mr. J. M. Cunningham, deputy comptroller of New York City; Mr. Walter Millard, of the National Municipal League; Dr. Frederick L. Bird, of Dun and Bradstreet; Mr. Harland Bartholomew; and Dr. Albert Lepawsky, of the University of Chicago.

The committee of the American Political Science Association appointed to consult with the Advisory Board of the National Citizenship Education Program sponsored by the U. S. Department of Justice (see this REVIEW, October, 1941, p. 965) consists of the following persons: Marshall E. Dimock, U. S. Department of Justice, chairman; Franklin L. Burdette, Butler University; Joseph P. Chamberlain, Columbia University; Kenneth Colegrove, Northwestern University; John M. Gaus, University of Wisconsin; Pendleton Herring, Harvard University; Roscoe C. Martin, University of Alabama; John B. Mason, Fresno State College; Peter H. Odegard, Amherst College; Mrs. Catheryn Seckler-Hudson, American University; Russell M. Story, Claremont Colleges; and Elbert D. Thomas, U. S. Senator from Utah.

The Southern Political Science Association held its fourteenth annual meeting at Nashville, Tennessee, November 14-15. The subjects for discussion included "Competence in Political Science," "One-Party Government in the South," "Civil-Military Relations," and "Post-War Objectives." Mr. Arthur S. Flemming, member of the U. S. Civil Service Commission,

was one of the speakers, and Professors T. V. Smith, of the University of Chicago, and Harvey Walker, of Ohio State University, represented the American Political Science Association. Some sessions were held jointly with the Southern Economic Association. Officers were elected for the coming year as follows: president, Roscoe C. Martin, University of Alabama; vice-president, James Hart, University of Virginia; recording secretary, John T. Caldwell, Vanderbilt University; secretary-treasurer, Manning J. Dauer, University of Florida; members of the Executive Council; Taylor Cole, Duke University; Paul K. Walp, University of Tennessee; Miss Marian D. Irish, Florida State College for Women; and A. B. Daspit, Louisiana State University. Robert J. Harris, Louisiana State University, was reelected editor of the *Journal of Politics*.

Northwestern University is announcing a program of post-entry university training for public service employees in the Chicago area. The program is sponsored by a group of public officials including the following: Louis Brownlow, director, Public Administration Clearing House; H. H. Woolhiser, village manager, Winnetka; Robert J. Dunham, president, Board of Commissioners, Chicago Park District; Robert Kingery, Illinois State Planning Commission; W. W. DeBerard, city engineer of Chicago; and Joseph L. Moss, director, Cook County Bureau of Public Welfare. Professor George C. S. Benson, of the political science department, is chairman of the University committee in charge of the program. Representatives of the schools of commerce, law, engineering, education, and of the departments of economics, psychology, and sociology are included. The main training program will be carried on at Northwestern's Chicago campus under the auspices of University College, and will specialize in courses requested by public officials and employees and of genuine practical value to them. Those giving courses will include James M. Mitchell, executive director, Civil Service Assembly; David W. Robinson, executive director, Public Administration Service; V. K. Brown, director of recreation, Chicago Park District; and other officials, in addition to members of the University staff.

**Exiled Governments: Their Official Records.** The removal of the seat of government of the Polish Republic to France on September 25, 1939, marks the beginning of the march of other governments into exile. Their current printed official records in exile may assume much more than ordinary importance if and when these governments return to their national territories. In view of the difficulty of communications at the present time, a brief description of the printed records may likewise be of more than ordinary importance.

For Poland, which had removed from its national territory on September 17, 1939, the removal to the territory of a then friendly ally was



heralded by the reappearance at Paris of the *Monitor polski*, the official gazette, No. 213 of 1939, under date of September 25. Publication of this gazette was continued at Angers, France, until No. 110-116 of 1940, dated May 20. Legislation of the Polish government in exile was published in the *Dziennik ustaw*, the law gazette, from No. 100 of 1939 to No. 9 of 1940, dated April 30. Upon the transfer of the seat of government to London about the time of the downfall of France, publication of the law gazette alone was resumed, with No. 1 of 1941, dated January 21.

Origins of the Czechoslovak government in exile are first marked by the establishment of *Česko-slovenský boj*, the official paper for the Czechs and Slovaks abroad at Paris on April 28, 1939, some weeks after the invasion of Czechoslovakia. The first number of *Úřední věstník Česko-slovenský*, the official gazette of the provisional Czechoslovak government, dated at Paris on January 1, 1940, contains the agreement concerning the establishment of a Czechoslovak army in France. No. 9 of 1940, the final issue of this law gazette to appear in France, was dated May 29, 1940. No. 10 of 1940, dated December 4—the first issue to appear in Great Britain—contains the exchange of correspondence marking the official recognition on July 21, 1940, of the Czechoslovak government in exile and its authority to function in England. No. 1 of the bulletin of the Czechoslovak State Council was issued in March, 1941, under the title, *Zprávy Státní rady*.

For Belgium, the first issues in exile of the *Moniteur belge*, the official gazette, are Nos. 139-151 of 1940, for May 18-30, 1940, containing the cabinet decree proclaiming that the king, being under the power of the invader, was unable to reign. The first issue of the gazette of the Belgian government in exile in England bears the date November 22, 1940. At the same time, the German-sponsored government of Belgium at Brussels is issuing a *Moniteur belge*.

For the Netherlands government in exile, the first issue of the *Nederlandsche staatscourant*, the official gazette, to appear in London was No 150 of 1940, dated May 24, 1940, the seat of government having been transferred from The Hague about a week earlier. At the same time, a continuation of the *Nederlandsche staatscourant* is being issued at The Hague under German occupation. Legislation is being issued from London in the *Staatsblad*.

For Norway, the first issue in England of *Norsk Lov tidend*, the law gazette, was printed under date of August 15, 1940, being a revision of the number issued in Norway on May 9, 1940, which contained the orders issued in April beginning with the invasion on April 9. Under date of August 30, 1940, the Norwegian Department of Foreign Affairs began publication at London of *Norsk tidend*, a weekly for Norwegians in England.

For "France Libre," under the leadership of General de Gaulle at London, the publication of the *Journal officiel de la France libre* was initiated under date of January 20, 1941. This had been preceded by one number (August 15, 1940) of a *Bulletin officiel des Forces française libres*. French Equatorial Africa, organized on September 1, 1940, as Free French Africa, by a representative of General de Gaulle, began issuing its official journal at Brazzaville on September 15, 1940, under the title, *Journal officiel de l'Afrique française libre et de l'Afrique équatoriale française*.

For the Grand Duchy of Luxemburg, the government in exile began to issue the *Mémorial*, its official gazette, at Montreal, Canada, with No. 1 of 1941, dated February 15.

In addition, there remain the still more recently exiled governments of Greece and Yugoslavia, about the printed current records of which no information is at present available.

JAMES B. CHILDS.

*Library of Congress.*

## BOOK REVIEWS AND NOTICES

*What is Democracy?* BY CHARLES E. MERRIAM. (Chicago: University of Chicago Press. 1941. Pp. 115. \$1.00.)

*Democracy in American Life.* BY AVERY CRAVEN. (Chicago: University of Chicago Press. 1941. Pp. 143. \$1.00.)

*Aspects of Democracy.* EDITED BY R. B. HULIMAN. (Baton Rouge: Louisiana State University Press. 1941. Pp. 113. \$0.50.)

In our preoccupation with finding the best means for national defense, it is important that we do not lose sight of the basic ends they are designed to serve, namely, the preservation of the democratic service state against the challenge of a totalitarian servile state. We need to be reminded again and again that "democracy" and the "democratic way of life" are not impoverished eighteenth-century symbols signifying nothing to a world in the throes of a managerial revolution. Democracy must restore, revive, or win anew faith in its purpose and its destiny; for if such faith is lacking we face inevitable defeat. In war, said Napoleon, "morale is as two-to-one in relation to material." To promote and sustain morale, we need more than anything else a clear understanding of and firm belief in the cause for which we fight. The tools of war are essential. Discipline and sacrifice are necessary. Efficient and clear-sighted leadership is indispensable. But without the will to win, all these will avail us nothing. The will to victory, in turn, must come in a democracy, not from blind unreasoning obedience, but from an understanding of the issues at stake. In promoting that understanding, these lectures at the University of Chicago and Louisiana State University make a significant contribution.

Professor Merriam sets forth in lucid and, at points inspired, prose the meaning of democracy, equality, and liberty. A concluding lecture on "Making Democracy Work" is a plea for national planning within the framework of a régime of liberty and law. Democracy, he rightly says, "is not dependent upon any particular economic system. . . . It is not the property of the white or the black or the brown race. It is not a possession of Aryans or non-Aryans." It is based fundamentally on the ineradicable and universal craving of human beings for recognition. It assumes the "dignity of man and the importance of treating personalities upon a fraternal rather than a differential basis." It assumes not the *identity* but the *equality* of men and women, and that, given opportunity for development, "the possibilities latent in human personality" are almost endless. It is precisely because democracy is based on equality and liberty that it affords a better opportunity for personal development of individual differences and capacities than systems based on inequality and servility.

Professor Craven undertakes to show how the general principles set forth by Professor Merriam are related to the pattern of American life.

Under Jefferson's leadership, he says, "democracy became the weapon of an important element in American life for the purpose of giving shape to the politico-economic structure." One may quarrel with Professor Craven's insistence that the Constitution was a reactionary "return to London by way of Philadelphia," or that the "democratic dogma" which "justified independence . . . had done little to alter the American social order as it had grown up from European beginnings." Professor Jameson's eloquent and convincing volume on *The American Revolution Considered as a Social Movement* contains enough data to cast doubt on such a thesis. But with Professor Craven's discussion of "The West and Democracy," "Democracy and the Civil War," and "Democracy and Industrial Capitalism" no one can seriously differ. The very critical tone in much of what he says helps to carry conviction and to renew one's faith in *Democracy in American Life*.

The Defense Lecture Series on *Aspects of Democracy* adds little that is new to the analysis of democratic theory. The individual lectures are too short to allow for much more than a statement of opinion, the longest of them being only nine pages. Throughout the volume there is, however, a refreshing confidence in the strength of free institutions.

If one were to summarize the contents of all of these lectures, one might say that as Fascism and Nazism deny liberty, equality, and fraternity, democracy represents their positive affirmation. It assumes that no man is good enough to be the irresponsible master of another. It maintains the integrity of individual personality. It believes that governments exist, not as ends in themselves but to make life good, not for a special class or caste, not for a mystical state, but for living, sentient, individual men and women and their children. It bases power on consent and organizes the state for the common needs and aspirations of its citizens. It believes that we should coöperate standing upright and not on our knees.

PETER H. ODEGARD.

*Amherst College.*

*Public Policy and the General Welfare.* BY CHARLES A. BEARD. (New York: Farrar and Rinehart, Inc. 1941. Pp. x, 176. \$1.50.)

This is a collection of essays, most of which have appeared in books or articles published since 1935. The logic that ties them together is therefore not so close or complete as the title promises. Yet the volume contains a restatement of some of the basic notions with which the distinguished author has been occupied in recent years, as well as older expressions of faith and insight. First in order, and perhaps in importance, is Beard's belief that a scientific or deterministic social philosophy is impossible of realization and that effort to attain it should be given up. All social philosophies at bottom start from ethical assumptions. Therefore if we

are to use our intelligence effectively we would best recognize our inability to escape from value assumptions, admit them for what they are, "set them forth as fully and clearly as possible, and then proceed to a consideration of the probabilities, limitations, and methods of realization, employing the most rigorous scientific method in the process." In the present period of world social crisis, the search for assured guides either in historical systems of thought or in scientific systems is futile.

While these truths are set forth as universals, Beard is preoccupied with their bearing upon the problems of America. Therefore in these essays his calls to social "scientists," statesmen, and the public are cupped in the direction of his fellow-countrymen. To them he says: "The condition precedent to attacking the problem of the crisis is then to determine: What is the ideal arrangement of economic and social life which we desire to bring into being, and thus rid ourselves of the undesirable things which make the crisis for us? Simple as this formula is, it constitutes a revolution in the positive and scientific procedures to which contemporary minds have so widely enslaved themselves, to their own defeat. By no other procedure can the confusion in thought and policy be avoided."

Most of the volume is made up of brief, and in some cases fragmentary, essays which explain and justify, for the most part, the democratic elements in the American political and social system, or which suggest some of the ingredients in Beard's recipe for American welfare. Thus he insists that, however much the democratic idea may owe to the rise of capitalism, its paternity is of humbler, more generous origin, with the despised seventeenth-century Levellers emitting the seminal demands essential to its propagation. Springing from social forces far more humane than capitalism, American democracy is today in object and method no mere foil for capitalism. It has, as the author sees it, six enduring elements: "popular government within a span of time, efficiency in function, sustaining economy, civil liberty, appropriate education, and the spirit of humanity and enlightenment which lifts men and women above the beasts of the field and confers upon them moral rights and social duties."

Two essays explain and defend the Hamiltonian interpretation of the powers of the federal government under the general welfare clause of the Constitution. Two others emphasize the importance of cultural liberty and the error of the traditional identification in general thought, economic theory, and constitutional law (for the last of which Burgess and Cooley receive particular blame) of liberty with economic *laissez faire*.

The final essay is an eloquent and penetrating statement of the function, process, and significance of administration in our Great Society. In the light of the public duties now developing, Beard finds "no other science more important in the present age than that of administration." In it rather than the sword is the "key to enduring power" and "human welfare."

The brief epilogue is a warning to the layman, for whom this volume seems particularly intended, to beware of viewing American problems divorced from knowledge of our particular experiences. European analogies, with which the smooth-tongued ideologues make commerce, are often false to the American situation. Thus political wisdom includes an understanding of the differences and peculiarities of our own experience and practice.

Because the reviewer's values and judgments lie so close to those which Beard expresses in these essays and elsewhere, he can only record his disappointment that some of the essays are so incomplete. This applies particularly to Chapters VI, VII, and VIII, in which the Supreme Court rather than Beard carries on most of the brief conversation. Nevertheless, the volume offers stimulating intercourse with one of the most enlightened and humane minds engaged in interpreting American public affairs.

CHARLES MCKINLEY.

*Reed College.*

*Constitutional Revolution, Ltd.* BY EDWARD S. CORWIN. (Claremont, California: Claremont Colleges. 1941. Pp. ix, 121. \$2.00.)

In the three lectures here published, Professor Corwin is not attempting to make a comprehensive, or even an entirely systematic, survey of the cases decided between 1935 and 1940. Rather is he concerned with the general character and the consequences of the limited constitutional revolution which took place in these years. The first lecture, indeed, is devoted, not to this particular period, but to a group of illustrative cases tending to demonstrate how broad was the freedom of choice open to the Court when the New Deal legislation came up for judgment. The usual argument for judicial review, that the courts only interpret the Constitution and cannot alter its meaning—that judicial review is, therefore, preservative of the document as it came from the Fathers—is not supported by the record. "Quite to the contrary, the chief result of judicial review has to date been the Court's emancipation from the constitutional document." So far as concerns a major share of the issues presented to the Court, that body had the choice between "yes" and "no," the opportunity "to translate into juridical idiom almost any result which it might decide to be for the best interest of the country."

The first part of the second lecture takes up the rulings in the *Schechter*, *Gold Clause*, *Carter*, and *Butler* cases. One who seeks a methodical analysis of this group of cases will not find it here, but he will find a number of pungent and, at times, suggestive comments upon the character and course of this series of decisions. Beginning in the middle of the chapter, the great change signalized in the *N.L.R.B.* and *Social Security Cases* is discussed. Some of the subsequent decisions are mentioned, but not considered at any length.

It is the last chapter in which appear Professor Corwin's observations on the results of the switch beginning in 1937. There are three casualties of this revolution and one general consequence which springs from the nature of the casualties. The judicial doctrines which can be listed as losses in the battle for judicial supremacy are the *laissez-faire* theory of governmental functions, the theory of competitive federalism, and the doctrine of separation of powers as expressed in the Schechter opinion. The strategical consequence of these casualties is the decline in the scope and effectiveness of judicial review.

With this classification of the changes produced by the recent revolution I agree. More than that, I have found this brief chapter the most interesting series of observations upon the recent history of our most peculiar institution that I have read. But if I both agree with and applaud the general argument of the chapter, there are several interstitial points with which I do not entirely concur. Thus, while I fully agree as to the significance of the recent decline of judicial *laissez faire*, I should doubt whether before 1937, or at least before 1935, the ideas of Adam Smith were applied with quite such rigor as is suggested in these pages. And while I agree with nearly all of the statements concerning the break away from Justice Roberts' concept of "competitive federalism" (which also seems to me a much more useful term than Professor Corwin's earlier "dual federalism," for all federal systems must, in some respects function dually; competitiveness is not so essential), I feel that Marshall is at least as much to blame for the early beginnings of this doctrine of fear and jealousy as were his successors. The neglected case of *Weston v. Charleston* is a prime example, and it is still good law.

It is impossible to disagree with Professor Corwin's conclusion that the importance of judicial supervision has declined. This will be so until the Court again becomes representative of an outgrown point of view, and again has the determination to enforce its will. Judicial review as we know it today has its uses, however, particularly in the rationalization of problems of political power. And not the least encouraging tendency of the years coming immediately after the battle of 1937 was that toward a more zealous guardianship of civil rights.

BENJAMIN F. WRIGHT.

*Harvard University.*

*John Locke and the Doctrine of Majority Rule.* BY WILLMOORE KENDALL. (Urbana, Illinois: University of Illinois Press. 1941. Pp. 141. \$1.50, paper, \$2.00 cloth.)

The relationship of majority rule and democracy needs more attention than it has generally received. From that viewpoint, the work under review is heartily to be welcomed. For Professor Kendall is concerned, not simply with the theory of majority decision, but rather with a complex

of ideas which together constitute the philosophy of majority-rule democracy. Nor is he concerned with John Locke for his own sake, or in terms of purely historical analysis. Rather, he uses critical discussion of Locke's political theory, including his views concerning the rights and powers of majorities, as a basis for propounding a view of the democratic process which seems to him logical, defensible, and practically desirable.

The work is divided into two parts. The first analyzes the development from the theory of majority decision to the doctrine of majority-rule, and insists that majority-rule democrats must accept, together with their equating of majority decisions with unanimous ones, the doctrines of formal political equality and formal popular sovereignty, and an insistence on the necessity of techniques for discovering the popular will. There, too, he shows how various theorists before Locke dealt with the problem of the use of majorities as a technique for reaching decisions, and argues that only with John Locke did the full problem of majority-rule get presented. Lastly, he argues that, following Locke's time, his ideas were taken for granted, not adequately examined, and generally misinterpreted. While he urges that Locke's *Two Treatises* showed numerous inconsistencies, and in particular failed adequately to reconcile an absolutist ethic and a theory of natural rights with a doctrine of majority-rule, he is convinced that it is an error to neglect the latter, or to read the work exclusively in terms of the former, as has so frequently been done. In particular, he argues, not entirely correctly, that this error has been regularly committed by American interpreters, who have made of Locke a defender of absolute rights (especially the rights of property) and of judicial review. Hence not the least of his concerns is to defend the straight majoritarian thesis in American politics by showing that it is not totally in opposition to Locke's teachings.

The second part of the book is devoted to a detailed critical analysis of Locke's statements, not only on majority rule, but on inalienable rights, the law of nature, popular sovereignty, and political equality, in order to demonstrate these theses. Professor Kendall claims that Locke, generally regarded as the prince of individualists, and a defender of absolute rights prior to and above the state, was in reality no such thing. Rather, while he did regard individuals as having rights, he regarded those rights as subordinate to, and to be interpreted in terms of, a doctrine of community welfare, of the conditions and contents whereof the majority was judge. There were, indeed, difficulties in his various views as to the law of nature, and he did not succeed in solving the problem he had posed of relating individualist doctrine to a doctrine of the supreme claims of community. But his theory of majority rule was an attempt to do so, and was not simply a theory of decision-making within a sphere limited by the claims



of individuals. Rather it may be not unjustly interpreted as a consequence of a doctrine of consent, by which men as political-social animals agree to be bound by majority decisions and to accept the majority as the proper authority for interpreting community will, and for deciding what are the just claims of individuals. Professor Kendall confesses that Locke does not make this completely clear. His failure is due to an inadequate stress on the significance of popular consultation, lack of a fully developed institutional system which would make majority-rule democracy the clear solution of his problem, and, above all, a curious blindness to the proper philosophical distinction between unanimity and less than unanimity. These inadequacies were due to his failure to perceive and develop his own latent premise that, granted that the average man is rational and just, then a majority properly has a claim to embody objective moral standards. Nevertheless, while Locke did fail, sometimes astonishingly, to discover the true clue to his difficulties, he is, in Kendall's view, quite clear in his acceptance of the power and right of majorities as against any individualist or higher-law theory.

Perhaps the major criticism to be made of this thesis is that, while it very neatly shows the totally different basis of a doctrine of unanimity and of anything less than unanimity, however close to it, it is surely false in its claims (a) that there are no genuine moral distinctions between bare majorities and overwhelming ones, and (b) in its total failure to note that, while in the sphere where decisions have to be made it is necessary for democrats to accept even a bare majority, there are spheres where decisions do not have to be made, and these spheres are not determined simply by the majority, or on the basis of numbers at all. This particular failure on Kendall's part results from an undue stress on an arithmetical analysis of the issue, which is itself the consequence of a lack of political realism, and especially of a curious unawareness of the significance of such matters as climate of opinion in determining whether we have, in fact, a democratic régime. While he is right in his argument that majority decision alone does not make democracy, it seems not impossible that such decision could be combined with the other elements he mentions, at least formally, without our having or preserving a democratic community.

Of his reëxamination of Locke, it is fair to say that, though it rests on close reasoning and shows considerable skill in argumentation, as well as close acquaintance with Locke's text, it is, nevertheless, neither a complete nor an entirely fair assessment of Locke's position. To examine texts closely is, no doubt, one of the duties of a scholar; but the performance of this duty alone may be harmful if it is not accompanied by an over-all vision. Mr. Kendall is atomistic and fails to see the woods for the trees. Undoubtedly his technique leads to emphasis on neglected aspects of

Locke's thought, as well as to raising many puzzling questions not previously raised. Yet some of those questions seem to be unnecessary ones, results of a display of argumentative acumen rather than consequences of an attempt at sympathetic understanding. Perhaps other scholarly commentators on Locke have, at times, put undue stress on the woods without noting the sometimes curious mixture of trees contained therein. Undoubtedly, too, some of them have taken a little uncritically certain traditions of Lockeian interpretation, and so have approached his work with preconceptions inimical to novel insights. Yet Kendall's own work suggests undue concern for novelty. While his analysis will necessitate qualifications of the extreme individualist interpretation of Locke, his own case is not proved, and leaves us still with the problem of reconciling divergent implications in Locke, previously noted by at least some scholars. Moreover it seems that the traditional view of Locke as a moderate, concerned with the triumph of common sense, and deliberately avoiding, if not always successfully reconciling, extremes, is more tenable than Kendall's own interpretation, and not incompatible with the evidence he adduces. And, while Dr. Kendall is fully justified in taking issue with previous scholars when reading of the text drives him to it, he seems quite unjustified in arguing that, because they have not been driven to his views, they have not really read Locke.

Lastly, it must be stated that, though connections between different parts of Locke's theory may be clear in Mr. Kendall's mind, he does not always make those connections clear to others. This is partly the result of poor writing: each chapter seems to stand alone; and in each chapter the sheer joy of close analysis and detailed criticism unfortunately leads to the obscuring even of the theme of that particular section. One is left with the feeling that Mr. Kendall would have done a greater service, both to himself and to his fellow-students, had he, on completion of the work, buried it for some months and then revised it for publication. As it is, it is wanting in perspective, is difficult reading, and lacks unity. Yet, with all this said, the work was worth undertaking, and students of Locke and of majority-rule democracy alike will find it necessary to take the author's findings into account. It is, moreover, to be hoped that Mr. Kendall will continue, as he proposes, his examination of the major contributors to the doctrine of majority-rule. One may also hope that, when he tackles Rousseau, next on his program, he will find some reason to qualify his present view that Rousseau stands largely where Locke is generally supposed to stand; just as Locke, as here interpreted, is essentially Rousseauian, according to what Mr. Kendall feels is the orthodox view of Rousseau.

THOMAS I. COOK.

*University of Washington.*

*The British Constitution.* BY W. IVOR JENNINGS. (Cambridge: At the University Press; New York: The Macmillan Company. 1941. Pp. xvi, 232. \$2.50.)

This is a small book (perhaps seventy thousand words) describing the central government of England. It begins with two somewhat lengthy chapters on elections and party politics, then discusses Parliament, the monarchy, administration, and cabinet government, and ends with two brief chapters on "Government in Wartime" and "British Democracy." There are eight excellent illustrations.

Studies describing and analyzing English political institutions have recently increased in numbers and excellence. Most of them, however, are very limited either in point of view or in subject-matter. Even admirable volumes such as those of Professors Keith and Laski usually have a circumscribed or a polemical aim. The works of Mr. Jennings, therefore, have come to occupy a unique position. They describe and analyze English governmental institutions in a manner scholarly, comprehensive, and dispassionate. It is true that Mr. Jennings has written no single treatise comparable with Bagehot's *English Constitution* and Lowell's *Government of England*, but his chief volumes taken together do for the generation of Attlee and Greenwood what Bagehot did for the generation of Gladstone and Lowell for that of Asquith. His *The Law and the Constitution* (1933) reexamined the constitutional basis of English government. *Cabinet Government* (1936) and *Parliament* (1940)—both broader than their titles—describe the central government of England. A series of brilliant essays and articles (comparable with Bagehot's occasional writings) fill in the chinks.

In one immediately important respect, however, there is a difference. Hardly a page in Bagehot's collected works is less good than the best page in the *English Constitution*; and Lowell always writes like Lowell. This particular volume of Mr. Jennings, on the other hand, is not quite like his volumes mentioned above. Though always interesting and suggestive, it is casual in some places and "viewy" in others. It is not always good-tempered. Its possible value for students or as propaganda is therefore hard to assess. Scholars, however, will find Mr. Jennings' judgments stimulating.

The rather brief chapter on "Government in Wartime" is less informative and less vigorous than Mr. Jennings' brilliant articles on the same subject in the *Political Quarterly* (April, 1940, to March, 1941) and the *Yale Law Journal* (January, 1941).

EUGENE P. CHASE.

Lafayette College.

*British Labour's Rise to Power.* BY CARL F. BRAND. (Stanford University: Stanford University Press. 1941. Pp. xi, 305. \$3.50.)

A chronic complaint of reviewers of books on the British labor movement is the lack of a definitive history of the Labor party. Professor Brand's eight studies included in this volume make a notable contribution toward filling a part of this gap. The book is the product of a competent historian who with care and diligence has studied the basic sources in both Europe and America. Some may puzzle over the inclusion of such a work in the Hoover Library series, but a glance at the contents will show how rooted in the ferment of the first World War was the spurt in strength of the Labor party between 1918 and 1924. The author's essays, except for the first on the conversion of trade unions to political action and the last on Labor-Communist relations, are limited to the war and immediate post-war periods.

British socialists may take exception to the title of the book, for between world wars Labor leaders have reiterated time and again that the party has never held *power*, but only *office*, and that with precarious Liberal underpinnings. Americans will understand properly Professor Brand's use of "power" as influence. The author wisely has treated his subject on a topical rather than chronological basis, although some of the topics logically fall into time sequence.

Most of the essays have previously been published in historical journals. Two of them, one on the founding of the Labor and Socialist International and the other on the Communists, have not been published before.

A student of the British labor movement may find little here that he did not know before, thanks to the Coles, the Webbs, Max Beer, and others who have chronicled working-class history. On the other hand, this volume must be called the most fully documented and most detailed account of the party's activities during the earlier World War. The narrative is a familiar one, and needs no repetition here. As yet, there are rather few parallels in World War II. No important Labor leaders refused places in the 1940 Churchill government; international socialist ties appear crushed under the Nazi yoke; the possibility of a negotiated peace seems far more remote than in 1916.

A dual shortcoming of the book should be mentioned. Reliance is placed upon reporting events and facts gleaned from published primary sources, to the exclusion of considering forces and ideas available from individual participants and other writers. For example, Professor Brand does not cite the excellent work of Professor William P. Maddox, *Foreign Relations in British Labour Politics* (Harvard University Press, 1934), which covers the period 1900-24 and provides indispensable interpretative material for understanding historical facts. The story of the Labor party, and perhaps

of other political phenomena, cannot be told in full without some account being taken of the psychological, political, social factors which lie behind events and actions; the student of politics also desires information on the techniques and machinery employed. The fact that such materials receive scant treatment in *British Labor's Rise to Power* does not mean that it is inadequate as a history. Professor Brand has written a fine account of important aspects of Labor party history, especially in the period 1914-20.

DEAN E. MCHENRY.

*University of California, Los Angeles.*

*The Cambridge History of the British Empire.* GENERAL EDITORS: J. HOLLAND ROSE, A. P. NEWTON, AND E. A. BENIANS. Volume II. The Growth of the New Empire (1783-1870). (Cambridge: At the University Press; New York: The Macmillan Company. 1941. Pp. xii, 1068. \$10.50.)

This is the fourth volume in this monumental series which the present reviewer has been privileged to discuss professionally. Seven of the eight volumes have now appeared. The first three are specifically historical, covering, in turn, British imperial history to 1783, from 1783 to 1870, and subsequent to 1870. Volumes four and five are devoted to India, and the remaining three to Canada and Newfoundland, Australia and New Zealand, and South Africa, respectively. The approach throughout is historical, but the resulting problem of coördinating the general portrayal of developments in the earlier volumes with the more particular discussions which follow has been handled with distinctive ability and success. In fact, the whole project constitutes a conspicuous example of organizational achievement in history writing. The set, of course, is indispensable to every college library, not merely for the history department, but wherever comparative government and international relations figure in the curriculum.

The specific volume now under consideration covers "The Growth of the New Empire." The beginning of this period was signalized by the fresh start in colonial policy consequent on the surrender of a large part of the old empire by the treaty of 1783. Speaking broadly, the narrative is here carried forward to the beginnings of the "Imperialist" reaction to decentralization within the Empire. The salient feature of this era was the development of autonomy within the Dominions—political, constitutional, economic—the crucial issues in each case being fought out first in Canada. It is a chronicle unique in the history of colonial government, and especially instructive to the student of representative government as such. The story is developed in detail in the volumes on the particular Dominions. Here its relation to the general picture is set forth. Correlatively,

also, during this period, there was the development of the "Dependent Empire," affording a wealth of data regarding the administration of "exploitation" rather than settlement colonies, and the international factors involved.

This aspect of British imperial history and of colonial problems from the Mother Country standpoint receives major attention in the present volume. The tasks involved in its preparation have been intrusted to twenty contributors. The arrangement of chapters, as would seem to be most satisfactory in a work of this description, is a combination of the topical and chronological, which incidentally facilitates its use for reference purposes. The work is characterized by the encyclopedic scholarship and careful documentation one has learned to expect in a Cambridge series. Special mention is due the detailed classified bibliography of 120 pages. There is also a 64-page index.

The reviewer would like to utilize this opportunity to impress a point which has been gaining some recognition within the last year or so. Apart from the United States and Britain themselves, the noteworthy remaining democracies today are the British Dominions. Although the apparent exigencies of text-book writing have heretofore limited this field of comparative government to about half a chapter, why not quadruple the emphasis from now on? From the standpoint of international organization, the British Commonwealth is a League of Nations which actually works. What are the bases and methods of coöperation, and the historical background which has mitigated rather than intensified the causes of friction? To the student of comparative political institutions, there is no more instructive field than the internal government and politics of the Dominions. For example, we find here federal governments applying the conventionally operated cabinet system, "limited" governments with written, judicially enforced constitutions, yet with reliance upon a background of custom and historical precedent to a degree puzzling, to say the least, to the American student.

It is the essential importance of this historical background in studying the governments of the British Commonwealth—as contrasted, for instance, with the made-to-order democratic constitutions of unhappy memory in post-war Europe—which renders such a work as that now under consideration (the most complete, up-to-date, and best organized of its kind) so essential to teacher and student within this field.

A. GORDON DEWEY.

*Brooklyn College.*

*The Assembly of the League of Nations.* BY MARGARET E. BURTON. (Chicago: University of Chicago Press. 1941. Pp. xi, 441. \$4.50.)

This is an excellent book. Miss Burton has studied the documents, but she has also spent considerable time in Geneva and has observed several

Assemblies at first hand; she knows the Assembly and she knows the League of which the Assembly is [was?] but a part. In eleven chapters, she has given us a thoroughly readable and accurate account of the origin, establishment, organization, operation, special problems, and general development of the League Assembly, an account which, in view of the part played by the Assembly, becomes almost a history of the League of Nations during these twenty years.

The author's painstaking review of the various plans for a League of Nations shows that it was actually the British Foreign Office which seemed first to envisage a League as something more than an instrument for preventing war, which proposed that it should also be an instrument for coöperating "continuously and regularly in all matters of common concern," which foresaw many of the problems later given major time by the Assembly (slavery, white-slave traffic, health, industrial and trade conditions, etc.), and which suggested an organ very much like the Assembly. At any rate, the Assembly was established, but without complete or clear provisions with respect to its organization, its procedure, or even its functions. Since it was a new and somewhat unique organ of international government, all of these matters had to be worked out, and, in view of the fears and suspicions, as well as the needs, had to be worked out most cautiously. Miss Burton's account of the First Assembly, which was confronted with this task, of its problems and its personalities, is one of the best in the book. It is also a demonstration of what can be accomplished by men of vision, courage, good will, and good sense.

Other chapters particularly illuminating are those dealing with the general character of the Assembly, the committee system, and the Assembly as an opinion-forming and policy-making body. There is also a full chapter on the unanimity rule, revealing the numerous ingenious practices and devices by which the worst effects of that ancient rule were avoided by the Assembly and majority government in effect obtained, although of course not in every instance; this chapter alone is an indication of how international government may evolve through compromise and reconciliation of the apparently contradictory principles of sovereignty and mutual coöperation, given a desire for actual coöperation rather than for conflict. There is in all these chapters a good picture, not only of the Assembly, but of the entire League in operation, and especially of the other principal organs, the Council and the Secretariat, their relations with and their influence upon the Assembly.

It is a matter for regret that in a book as good as this, and one presumably written especially for American readers, there is no systematic treatment of the relations of the United States to the Assembly. There are occasional references to the United States, but quite inadequate on any point, and on some exceptionally important matters, such as Manchuria and the Chaco, chiefly by footnotes (p. 330, n. 56; p. 334, n. 3 and 4;

p. 337, n. 14). There is no mention, for example, of Hugh Gibson's statement to the Disarmament Conference with respect to the importance of the Assembly's consideration of the Manchurian affair, deleted from the official record but nevertheless presumably indicative of our attitude; nor of Secretary Hull's note on the occasion of seating Mr. Leland Harrison on the Assembly's Far Eastern Advisory Committee, advising members of the League on their obligations and on what they might expect from us. These and other events are important indications as to the nature and helpfulness of our own coöperation, and certainly as to the problems of the Assembly, important enough for thorough treatment in a separate chapter.

There is an occasional statement which, if not technically inaccurate, may carry faulty implications. The assertion that "the Council's regular sessions were four during the early years and later only three" (p. 126) may cause some readers to forget that the Council found itself obliged to hold an average of about five sessions a year instead of the minimum number required by its rules. Similarly, the statement that the Sixth Committee had in 1937 a "membership" of 145, but that on some propositions only 26, 27, and 31 votes were cast (pp. 140-141), fails to note that included in the total membership list are the substitute delegates, who may have been present in the committee room, but who certainly did not participate and should not be counted if the principal delegate was present. These are minor matters, however, and the book is, on the whole, almost a model of excellence. The place of the Assembly in international government is well summed up in the last paragraph: "Whether or not the Assembly of the League of Nations is ever again convened to meet in the *Palais des Nations* at Geneva, it has done much to lay down the lines for the representative body of the international organization of the future. Little need be torn down; much firmly built and well-tested structure may well serve as the framework of the future representative body either of the League or of its successor."

CLARENCE A. BERDAHL.

*University of Illinois.*

*The United States in World Affairs; An Account of American Foreign Relations, 1940.* BY WHITNEY H. SHEPARDSON AND WILLIAM O. SCROGGS. (New York: Published for the Council on Foreign Relations by Harper and Brothers. 1941. Pp. xiv, 400. \$3.50.)

In these hectic days, when one's train of thought may be derailed by the swift current of passing events, this book should be at the elbow of every student of American foreign policy. It is a fascinating chronology of 1940, an exceedingly crucial year in American history during which we passed from the era of the "phony" war and complacency to the terrors of the Blitzkrieg and the resulting all-out aid for democracy. During the



first stages of the war, with a curious serenity inspired by the impregnable qualities of the Maginot line, we still clung to the concept of neutrality. Even when Finland felt the invader's heel, we were not disposed to render direct aid, and what we did give was far too late and far too little. With the invasion of the Low Countries and the fall of France, however, the United States became both "shocked and angered." Cognizant, at long last, of the Nazi threat to our democratic way of life, our people called for action. Congressional economy gave way before the demand for a two-ocean navy, a greatly increased army, a huge air force. The Monroe Doctrine was invoked to prevent the transfer of American territory from one non-American power to another. Appeasement was replaced by a sterner stand against Japanese imperialism in the Pacific. Defense ties between Canada and the United States were strengthened. By the end of the year we had completely renounced any thought of neutrality and had promised to serve as "the great arsenal of democracy." It was not clear, however, that the American people fully realized the implications of their decision, since, in a world dominated by power politics no nation should depart from the beaten path of neutrality unless it is ready for any eventuality—including war. Because we did not want to fight, we were, in effect, on the horns of a serious dilemma. Should we run the risk of a war we did not want in order to insure an Axis defeat? Or should we carefully avoid the hazards of an immediate war, even at the colossal expense of a Nazi victory? It might be that we could not have our cake and eat it too.

This, in brief, is the story the writers have to tell. And they tell it exceedingly well in a book that combines the qualities of scholarship, objectivity, and reading interest. While the reader will find it a splendid review of world events in 1940, major emphasis is, of course, focussed upon the rôle of the United States in the war. The bibliography, the maps (may we have still more maps?), the chronology of events, and the appended documentary materials—including a digest of Gallup polls pertaining to foreign affairs—should prove most helpful. The book is the ninth in the annual survey of "The United States in World Affairs" sponsored by the Council on Foreign Relations. At a time when we need to understand thoroughly where we have been as well as where we are going, it appears as a most welcome and worth-while supplement to its eight predecessors.

FRANCIS O. WILCOX.

*University of Louisville.*

*Commission to Study the Organization of Peace: Preliminary Report and Monographs.* (New York: Carnegie Endowment for International Peace. 1941. "International Conciliation," No. 369, pp. 193-531.)

This is perhaps the most important issue of the *International Conciliation* series ever put out. It is, in effect, a handbook of international politics and government, as of today, along with an analysis of the major problems

involved in the reestablishment of peace, and a statement of the principles which should govern its organization. This large brochure is a symposium of contributions from some twenty-five experts, and is, incidentally, an example of a very successful collaborative effort, though there are inevitable disparities in the quality of the parts.

The spirit pervading the volume is indicated by a statement in the preliminary report of the Commission in which it hopefully and courageously envisages "a world in which the forces of applied science and the diffusion of knowledge offer to all men and nations a plane of living, a freedom and richness of spiritual, cultural, and economic attainment that can scarcely be imagined at the present moment." The world, as this group sees it, is confronted with two alternatives: the organization of the world by conquest, or by consent; and the time is anticipated when man will abandon reliance on brute force and "will again profess his faith in reason."

Extreme positions are avoided. The nation-state is recognized as the dominant unit of world society today, and the transition from this to ultimate federation is seen as an inevitably slow process. We cannot demand the complete abandonment of national sovereignty in one leap. "The world must evolve from League to federation."

The spirit of Immanuel Kant pervades the contribution of Dr. James T. Shotwell, who sees the forces of modern civilization, almost in spite of themselves, working inexorably for peace. Science and interdependence of peoples provide the basis for the peace movement, and "science is the final and invincible ally of peace." To a degree, this spirit pervades all the essays, in the sense that all assume that the imponderables argue in favor of constructive measures, and that the odds are in our favor if we act intelligently and forcefully. But vigorous action is regarded as essential. Peace is not a static, negative concept or condition. Charles G. Fenwick and others stress the point that it is always dynamic, and that the rules of law must "correspond with the changing conditions in the relations of states."

Economic factors are regarded as among the basic elements in a peaceful future. Eugene Staley lists three fundamental principles: (a) access for all to raw materials and markets; (b) internal economic stability, to prevent disastrous booms and depressions; and (c) progressive economic development, to maintain standards of living and to deal with acute economic problems as they arise. Alvin Hansen appropriately warns against assuming that economic prosperity would inevitably follow the elimination of trade barriers, for this would not, of itself, solve the depression problem, the fundamental cause of which he attributes to "the fluctuation in the rate of real investment."

International political institutions are analyzed and appraised by Benjamin Gerig, Quincy Wright, Clyde Eagleton, and others. The close

tie-up between collective security and provision for peaceful change is emphasized, and the futility of economic sanctions if we announce in advance (as in the Italo-Ethiopian case) that we will not use them if they really inconvenience the aggressor.

It is too bad that the volume does not have an index and a bibliography, but Dr. Shotwell's Commission has done a very good job, and the Carnegie Endowment deserves our thanks for making the report available in this very inexpensive form. The book should be read by all who exercise their minds on the thorny subjects involved in the peace settlement after this war.

G. BERNARD NOBLE.

*Reed College.*

*The Spoil of Europe; The Nazi Technique in Political and Economic Conquest.* BY THOMAS REVEILLE. (New York: W. W. Norton and Company. 1941. Pp. 344. \$2.75.)

In a brief foreword, Raymond Gram Swing vouches for the reality and integrity of the author, who, because of his official position, must remain anonymous. We are told "that he knows ten languages, German included, and that he has long been associated with leading persons in control of the economic, financial, and political life of Europe." The author states that the book is largely built up on official German accounts, pieced out by available American and English sources. The volume unfortunately is not well documented. There are virtually no footnotes, and the brief source references for some of the chapters in an appendix are inadequate if one desires to trace any particular statement.

In order to explain the technique of conquest, the author discusses Nazi ideology and devotes four chapters to a description of the economic organization of the Reich itself. Some very useful charts of the different estates are given. The descriptive account is informative, although it makes difficult reading. The main portion of the book is a detailed exposition of how all districts incorporated into the Reich or under occupation are administered for the advantage of Germany. While following a general pattern, the procedures have varied from country to country. Tables are provided showing the different currency valuations in terms of Reich marks. In general, there has been an effort made to raise (in a few cases, lower) the wage and price level to that of Germany. In the case of the Poles and Jews, some of this increase in wages is taken back in the form of a special tax, *Sozialausgleichsabgabe*. The author maintains that the costs of the armies of occupation are not figured on the basis of actual expenditure, but are approximately equal to the amount of money the occupied country had been spending on its war budget. The unused balance of these occupational charges is used to buy up shares, usually

about forty-nine per cent of the stock, in various businesses. Berlin is fast developing into a multiple clearing-house for the trade of the Continent, thereby eliminating the need for a free exchange medium.

The book is chock-full of information. The amount of detail furnished on the variations of procedure from country to country and on what has happened to leading industries and banks in each is almost incredible. In the final chapter, the author is less happy when he seeks to account for Hitler's failure to invade England, for Hess' trip to England, and for the invasion of Russia. It hardly gives credit to the planning necessary for a Blitzkrieg to maintain that the Nazi invasion of Russia on June 22, 1941, was a gamble determined on after Roosevelt made his statement to Congress on the sinking of the *Robin Moor* on June 20. The reviewer also cannot agree that the "first and foremost" result of this invasion was that "it averted an immediate and open declaration of war by the United States."

E. C. HELMREICH.

*Bowdoin College.*

*National Unity and Disunity; The Nation as a Bio-Social Organism.* By GEORGE KINGSLEY ZIPF. (Bloomington, Indiana: The Principia Press, Inc. 1941. Pp. xv, 408. \$3.50.)

The author of this book purports to apply to human group-behavior "the same ruthless objectivity" as that of a biologist. Regarding a nation as "a natural bio-social entity" comparable to a colony of ants or bees, he sets out "to discern . . . the fundamental drives that govern our behavior."

The "law of nature" discovered and elaborated is the harmonic series, "1, 1/2, 1/3, 1/4, 1/5 . . . 1/n." Nature, he believes, is specially fond of this set of relationships, and American cities, in terms of population, presumably fall into some such relation to each other. He applies the formula to other selected political areas of the world. When the harmonic series works out perfectly (which it never does, in fact), the economy of the political unit in question is in proper balance. If the harmonic series is skewed, then there is an unbalance in the economy. Applying this "law," the author discovers that India is "exploited by a social-economic parasite," and that Germany suffered disastrously from the Versailles Treaty, but that, as a result of her acquisitions in Austria, Czechoslovakia, and Poland, she has been approaching normality. The British Empire, on the other hand, although a vastly larger economic unit, is shown to be in a state of "unbalance." The conclusions in each case are largely subjective, since the objective data presented would scarcely seem to justify them.

The same "law" is applied, with limited success, to income groups, and we are told that Nature believes, not in "the greatest good of the great-

est number," but in the "greatest good for the nation," the population of which consists of the "élite and the pariahs." Thus, democratic equality is presumably ruled out by Nature. Pursuing the "spirit of passionate objectivity," the author prescribes an isolationist foreign policy for the United States, although no graphs are used to demonstrate the solution. Specifically condemned by him is the "Committee to Defend America by Aiding the Allies," which, in his judgment, is seeking to interfere with the beneficent operation of Nature's laws and with the work of Adolph Hitler. Altogether, the doctrines smack strongly of fascism, and they are not saved from this association by the adornment of "scientific objectivity."

G. BERNARD NOBLE.

*Reed College.*

*Boundaries, Possessions, and Conflicts in Central and North America and the Caribbean.* BY GORDON IRELAND. (Cambridge, Mass.: Harvard University Press. 1941. Pp. xv, 432. \$4.50.)

Together with the preceding volume, by the same author, covering the countries of South America, this work completes a very valuable compendium of the factual record of international boundary disputes in the Americas. In a form not too difficult for the interested reader, there is presented the historical and legal record of each international boundary—claims, arbitration agreements and decisions, and treaties—with citations that are certainly adequate, if not unnecessarily lengthy.

The brief introductory sketch of the political history of each state may be helpful to the reader. More welcome, to scholars as well as to casual readers, would have been an introductory statement for each boundary study defining the areas in dispute. As it is, the reader must first wade through lengthy official claims to find out what the argument was, or is, about.

Since the work is concerned solely with territorial problems, it is most unfortunate that neither the author nor his map-maker appears to have any knowledge of either principles or techniques of geographic study of boundaries. A great amount of material presented in well-nigh incomprehensible verbal description could far better have been presented on maps. Even for purposes of orientation, the reader will find little help in the inadequate, amazingly amateurish, and frequently faulty maps that were specially prepared at the expense of Harvard University—an institution with which is associated, in the Institute for Geographical Exploration, one of the foremost cartographers in the country.

Shorter sections of the work are: the useful listing of the islands adjacent to North and Central America, including many that are but little known, with a brief statement of the record of sovereignty of each; and a

list of existing treaties of Central American countries with each other and with other Latin American states. There is a full index.

RICHARD HARTSHORNE.

*University of Wisconsin.* •

*The Mysterious Science of the Law.* BY DANIEL J. BOORSTEIN. (Cambridge, Mass: Harvard University Press. 1941. Pp. xviii, 257. \$3.00.)

The subtitle describes this book's purpose and achievement quite accurately when it tells us, in the style of the period, that it is "An Essay on Blackstone's Commentaries, Showing How Blackstone, Employing Eighteenth-Century Ideas of Science, Religion, History, Aesthetics, and Philosophy, Made the Law at Once a Conservative and Mysterious Science." Dealing separately with such topics as science, nature, history, reason, aesthetics, liberty, each chapter opens with a survey of the general temper of the period. First poets, novelists, and essayists, dictionaries and popularizers of scientific works, are quoted at some length. Pictures of the time which refer to the various abstractions in a characteristic way are reproduced. Then, for each category, the author turns to Blackstone's ideas as expounded in his *Commentaries*. The comfortable breadth of this environmental description, novel in its subdivision rather than in the historical material, is attractive and stimulating. In this manner, Blackstone's admiration of nature and his confusion of its meanings, especially of *is* and *ought*, primitive perfection and perfection through progress, paradise lost and paradise ahead; his glorification of reason and his admiring capitulation before obscure elements of traditional institutions; his enhancing of natural rights and quietistic confidence that they are incorporated in English law; his love of beauty, which is clear and orderly, and of the sublime, which is obscure and disordered—these and many other contradictions regain much of the common-sense appeal and universal character which they had at his time.

The effect of the present analysis is less disparaging today than it would have been some thirty years ago. True, we are complacently aware of the confusion, ready to refute and reject it, but we are no longer confident that negative analysis disposes of the problem. Contradictions seem to have some origin deeper than we are yet able to describe. Despite his impeccable exposure of the confusion aspect, the author never leaves us without a positive interest in the spirit of the time and a respect for its errors. Only at the end, when out of all those conflicting ideals there emerges Blackstone's glorification of property, does he become frankly ironical.

The author's Blackstone is America's Blackstone, deeply influential on the conceptions dominant at the time of the Revolution, when his reference to nature and reason as the ultimate tests of the validity of rules seeped to all the intelligentsia through lawyers nourished on the *Commen-*

*taries*. Mr. Boorstein omits mentioning, however—and in this omission again he follows the spirit of his hero's period—that Blackstone also laid the foundation of the antagonistic doctrine which ascribed to statute law primacy over natural law, to Parliament over common law, and thus ultimately re-enthroned Hobbes' concept of sovereignty above Locke's inalienable natural rights and above Sir Edward Coke's dicta on the pre-eminence of natural law. There is some indirect allusion (p. 158), but the main passage is not mentioned. It reads: "But if Parliament will positively enact a thing to be done which is unreasonable, I know of no power in the ordinary forms of the constitution that is vested with authority to control it; and the examples usually alleged in support of this sense of the rule do none of them prove that, where the main object of the statute is unreasonable, the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government."

Here is another mystery in the mysterious science of law, not solved either by the author, who incidentally reveals his scepticism (pp. 139, 191), or by the author's author. The latter tried to escape the snare by teaching that the individual was free to disobey unjust law, taking the penalty upon himself, or to obey it with regret; "and his conscience will be clear, whichever side of the alternative he thinks proper to embrace" (p. 158). But if this was so, why then should the judge not have the same choice? Why should positive law if unjust be binding upon him? Today, Blackstone teaching the sovereignty of positive law has long outrun Blackstone glorifying natural rights. Steeped in the former doctrine rather than the latter, modern lawyers have reason to look with some amazement at the consequences for judicial ethics in totalitarian countries. Time seems ripe for Locke *redivivus*, or at least for a positive international due-process clause (deprived of property glorification), although the obstacles, theoretical as well as practical, are formidable. However that may be, Mr. Boorstein's book, wisely stopping short of such reflections, must be warmly recommended, especially as supplementary reading in law schools and political science departments. It is thoroughly annotated and in addition contains a glossary of legal terms for laymen.

ARNOLD BRECHT.

*Graduate Faculty of Political and Social Science,  
New York City.*

*Crime and Its Treatment; Social and Legal Aspects of Criminology.* By ARTHUR EVANS WOOD AND JOHN BARKER WAITE. (New York: American Book Company. 1941. Pp. ix, 742. \$3.50.)

This volume, which is a part of the American Sociology Series edited by Kimball Young, is designed as a textbook on the subject of criminology. Written in collaboration between Arthur Evans Wood, a professor of

sociology, and John Barker Waite, a professor of criminal law, it goes far beyond the usual textbook in this field in its attempt to effect a synthesis of the sociological and legal phases of the crime problem. Since any fresh insights concerning human behavior which arise from the social sciences must be accepted and implemented by the law before they can be available for social control, the consideration given in this volume to the method and content of the criminal law seems amply justified. Not a little of this legal discussion, it should be mentioned, accords with points of view that one finds in modern psychology and sociology. All of which adds to the value of the book. Although the legal contribution in this volume is important, it should not be overemphasized; of the twenty-five chapters, only eight are directly concerned with the legal aspects of crime.

The other seventeen chapters are concerned in part with such matters as (1) the problem of crime in relation to sociology and other social sciences; (2) criminal statistics; (3) the case study approach to problems of crime and delinquency; (4) crime and the community; (5) environmental factors, specifically considered; (6) descriptive characteristics of criminals; (7) the psychiatric status of criminals; (8) juvenile delinquency and the juvenile court; (9) the theory and practice of punishment; (10) the rise and development of the prison system; (11) problems of penal institutions; (12) extra-mural forms of corrective treatment, including probation and parole; and (13) the outlook for crime prevention.

Professor Wood, who has been chiefly responsible for these chapters, examines the problem of causation with great care and objectivity. In doing so, he gives the student an opportunity to appraise the best views arising from recent studies in this area. His analyses and evaluations concerning penology and prevention are also well considered and presented with clarity and restraint. His contribution should enable the student to get a well-balanced view of these baffling social problems. In considering the history and operation of our present criminal codes, Professor Waite speaks as an avowed critic of outworn legal rules. As he sees it, our criminal law is in need of considerable modification both in practice and in interpretation, if it is to be brought into line with modern reason and scientific knowledge. He is insistent in his demand that the law forego its ancient punitive sanctions, and substitute therefor the objective of defending the community. His analysis of the legal aspects of crime should be most helpful to the student of criminology. In short, this collaboration would seem to have produced a very happy result. Professors Wood and Waite have moved along a new line to the very great profit of the present-day student of criminology. This volume also contains some well selected statistical tables, and a satisfactory index is appended.

F. R. AUMANN.

*Ohio State University.*



*American State Debts.* BY B. U. RATCHFORD (Durham, North Carolina: Duke University Press. 1941. Pp. xviii, 629. \$5.00.)


That state debts have been mounting since 1917 and that state financing of bonded or other indebtedness has frequently been ill conceived, poorly administered, and concluded unfortunately, with repudiation or difficult refinancing, is well known. Encompassed within the covers of a single book, however, the history of state debts from colonial times to the present brings a clearer perspective than it has been possible to secure from the numerous special studies of the past. Possibly this is the chief contribution of this new volume. It makes interesting, even if, of necessity, none too rapid, reading for the student of public finance, and carries a lesson for the future.

The colonial period, Revolutionary debts, and federal assumption are first reviewed, with circulating notes serving not only as currency but also as a method of borrowing without taxation. The remainder of the book the author divides into five periods. From 1820 to 1840, state bonds were issued to finance canals, railroads, and banks, rather disastrously. In the second period, 1845-60, railroad finance continued rather more successfully and might have resulted in little serious loss if the Civil War had not intervened. In the Civil War period, Northern and Southern states borrowed primarily to finance the war, the former to be reimbursed by the federal government, the latter to face repudiation. In the fourth period, Reconstruction, state borrowing in the South was corrupted and used with devastating effect upon all concerned.

The fifth period, from 1910 to the present, "is marked by borrowing for many purposes, but mainly for highways, veterans' bonuses, and unemployment relief." In volume, it surpasses all previous periods combined; and to this period, sixteen of the twenty-five chapters are devoted.

As for the reasons for state indebtedness, "the one purpose which has dominated state borrowing since 1820 has been the financing of transportation." "Nearly one-half of all state debts incurred since 1900 have been for the purpose of building roads and bridges," Indeed, the automobile may have been responsible for about four times as much indebtedness since 1910 as the next two causes of state borrowing, i.e., war and relief of unemployed. Other purposes have been important, though much less in volume. The creation of loan funds, condemned by the author, has been a persistent reason for borrowing from colonial times to the present, as has the funding of current deficits at frequent intervals.

In dollar volume, state borrowing was low prior to 1860 in comparison with recent years. From 1919 to 1938, "the states borrowed several times more than they borrowed in the preceding one hundred and thirty years." After inactivity during the first World War, the states borrowed in 1921, "chiefly for highways and soldiers' bonuses, more than \$270,000,000.



This total was more than three times as great as any pre-war total and, with the exception of the year 1934 (\$300,000,000), has not been exceeded since that time," the total declining steadily to reach, in 1938, the lowest point in ten years.

There are several case histories of individual states, as for example the Virginia debt, Arkansas and Tennessee as illustrations of over-borrowing or bad debt administration, and the rural credit experiments in North and South Dakota and Minnesota. The chapters are well documented with numerous references for further details on other states.

The last ten chapters give adequate attention to constitutional debt limitations, court interpretation thereof (including the special fund doctrine), the enforcement of state bonds, a history and critical analysis of state revenue and limited obligation bonds, and proper administration of state debts. Most readers will probably agree with the recommendations for a sound debt policy, based on the experience recounted in earlier chapters. Students of public finance will find the volume very helpful in its coverage and careful analysis. To all public officials who may hereafter have responsibility in connection with state debt policies, it can be recommended as profitable reading.

FREDERIC H. GUILD.

*Kansas State Legislative Council.*

*Local Planning Administration.* EDITED BY LADISLAS SEGOE. (Chicago: Institute for Training in Municipal Administration. 1941. Pp. xii, 684. \$7.00.)

Segoe, a professional city planner, together with six collaborators including Walter Blucher, executive director of the American Society of Planning Officials, prepared this thoroughgoing summary of the literature on planning administration in the United States for the Institute for Training in Municipal Administration, a home study in-service-training program conducted by the International City Managers' Association. Unfortunately, the volume does not include the lesson questions and the suggested readings; and another omission of major importance, less understandable, is an index.

According to the preface, the original plan of the book was laid out by Blucher, who, because of pressure of other activities, was compelled to delegate the task to Segoe, well-known as director of the Urbanism Committee of the Natural Resources Planning Board. The volume is broad in scope, and fills a very important gap in the literature of public administration. Except for the fact that planning does not ordinarily include a discussion of fire, police, personnel, and relief programs, the book is the most comprehensive general work on municipal administration known to the reviewer. It has real meat in it.

One or two points may be commented upon. The omission of any reference to Walker's *The Planning Function in Urban Government* is a glaring fault. Walker's findings and conclusions are discussed, but no mention is made of the book. Segoe has a tendency to draw illustrations and proof from Cincinnati, his home town. It is the reviewer's opinion that better illustrations for some points are to be found in the publications of national, regional, state, and local planning agencies. The chapter on population relies upon the Wisconsin studies, which are not the best in the field, according to the population experts (see special report of the National Resources Planning Board on this subject). Although many of the 1940 census figures are now available in the form of releases, they were not used.

Written by professional planners, the volume has many lessons for academic political scientists. While technical in parts, it is nevertheless comprehensive, realistic, and challenging. Political scientists whose only contacts are students and colleagues do not write such books.

HAROLD F. GOSNELL.

*University of Chicago.*

*The City-County Consolidated.* BY JOHN A. RUSH. (Los Angeles. Published by the Author. 1941. Pp. xviii, 413. \$3.00.)

Much useful and interesting information can be extracted from this book by one willing patiently to endure unto the last. Devoting attention to a phase of metropolitan organization which has been denied the attention it seemingly should command, the volume has been prepared by John A. Rush, author of the constitutional amendment in Colorado which created the consolidated city and county of Denver in 1902.

An historical résumé of the origins of borough and municipal government serves as a preface to the analysis and presentation of the problem of what the author calls the "city-county consolidated"—those instances in which territorial extent coincides and boundaries become coterminous for two units, served by one government seized and possessed of what are termed city and county functions respectively. Examples are marshalled rather skillfully to illustrate and buttress the author's contention that this type of local and municipal organization is the natural, fundamental form in which the municipal or metropolitan level should be cast, so as to be moulded into counterparts of the early institutions of free Anglo-Saxons.

Attention is given to present-day New York City, to New Orleans, Philadelphia, Baltimore, San Francisco, St. Louis, Denver, and a couple of dozen Virginia towns as types of this particular institutional structure. Adequacy is attained in the treatment of each city-county consolidated. The style is provocative and fluent; the thought is generally lucid; and the book is well-written.

The author believes whole-heartedly in home rule at the municipal level; he is utterly sincere in his serious and conscientious advocacy of the right of municipalities to govern themselves. Nevertheless, his reasoning upon this point descends on occasion to mere sermonizing and to exhortatory exclamations at the wonderful contributions to the inherent right of self-government by the Anglo-Saxons and the English. By a logical *tour de force*, all of the sinister, corrupt, meddling, bad men of politics, all of the mean motives and sins of party strife and faction, become severed from their institutional matrix, political processes in general, and fastened solely and exclusively upon state governments.

Thus, bad men in state governments have used the courts to develop false doctrine to the effect that the city is the creation of the state, deriving its powers therefrom, even under the medium of home rule provisions in state constitutions. Sin is thus successfully opposed by its attribution to another governmental level.

Liberal in his recognition of the waywardness of the courts, cogent in his argument for the city-county consolidated, the author ensnares himself in an apparent condemnation of the council-manager form of government by using another mangy sheep as an example—Pendergast-controlled Kansas City under that type of municipal government.

These points are mentioned to indicate that this is altogether a book to be read patiently with the hope of reward. The scholarly aids—index, bibliography, table of cases, and appendices—are adequate.

CHARLES W. SHULL.

*Wayne University.*

*The Number 1 Municipal Law Problem: Home Rule.* Report of the City of Chicago Law Department for 1940. (Chicago: Chicago Law Department. 1941. Pp. 150.)

*The Government of the City of St. Louis.* Summary Report of the Mayor's Advisory Committee on City Survey and Audit. (St. Louis: Governmental Research Institute. 1941. Pp. 318.)

The report of the City of Chicago Law Department for 1940 should give new impetus to the home rule movement which in recent years has lagged. The general arguments for home rule are presented, with special emphasis on its need in solving Chicago's problems. There is also an extensive bibliography on home rule and the text of the pertinent constitutional provisions in all states. Many illustrations are given to show that by the principle of legislative control Chicago has been hindered in meeting effectively the problems arising in that city. While the report offers no profound or new contribution on constitutional home rule, it does by a study of the specific problems in one city make a strong case for freedom for cities from legislative domination. Hope for progress in local adminis-

tration lies in allowing local officials to meet their problems through their own originality and imagination, rather than through legislative guidance and domination. After reading the report, one is convinced that legislative control has hampered services, prevented economies, and added to the financial difficulties of the city of Chicago and other local governments in Cook county. While the Chicago problem is emphasized, the report points out that the need for home rule applies to other cities in the state.

The survey of the city government of St. Louis which was made by Griffenhagen and Associates and the Governmental Research Institute of St. Louis, under the direction of the latter organization, was an outgrowth of the appointment by the mayor of an Advisory Committee on City Survey and Audit. The survey included studies of the organization, policies, procedures, practices, the value and cost of services rendered, and the expenditures involved with respect to all municipal governmental departments and agencies subject to the control of the mayor or the council. The report lists 900 recommendations; hence there is little discussion of general principles or fundamentals. An action program is presented in the report, much of which will have little interest for persons who do not live in St. Louis. As illustrative of the detailed suggestions, the report recommends that in one of the city hospitals a window washer be employed, and that a floor scrubbing machine be purchased; and that in another hospital certain sterile articles that are not now dated be so marked, and that food garbage be examined to prevent losses of silverware. The report also considers broader aspects of reform such as the powers and duties of the mayor, organization of the council, personnel administration, and the organization of administrative departments, with recommendations in each case. The criticism made of many governmental surveys, that they are stereotyped recommendations without adequate consideration of the local problem, cannot be made of this one. It is a "tailor made" report, based on thorough consideration of local problems.

These two studies supplement each other. The Chicago report indicates the difficulties a city has under strict legislative control. The St. Louis survey indicates how local problems can be met under constitutional home rule. The report indicates that all has not been well in St. Louis; but the remedy and the responsibility are in local hands, few of the changes recommended requiring state legislation.

CHARLES M. KNEIER.

*University of Illinois.*

*Government Control of Business.* By HAROLD D. KOONTZ. (Boston: Houghton Mifflin Company. 1941. Pp. xiv, 937. \$4.50.)

A few years ago there were not more than two or three general textbooks in the field of government control of economic enterprise. This has

now become the average annual production. The pattern of these texts has been surprisingly, and disappointingly, uniform. The book here reviewed conforms to the accepted pattern. After an introductory section on "The Problem of Control," there follow sections on transportation, public utilities, monopoly and competitive practices, financial and exchange institutions, the extractive industries, labor, and government promotion and ownership of business.

As stated by Professor Edgar S. Furniss in an editor's introduction, the aim in each field of enterprise covered is to present a description of the existing rules and regulations "against a background of historical development and in the light of sound economic principle." Professor Koontz has conscientiously pursued this aim. Each section contains a mass of factual material, and yet is compact, well-organized, and clearly written. The author is thorough, accurate, and objective. Within the limits of what he has attempted, he has done a competent job.

In spite of its excellent qualities, the book has serious shortcomings. In his attempt to cover so much ground, the author has not been able to avoid making it somewhat encyclopedic. The longest section, almost twice as long as the second longest, is that dealing with the regulation of transportation agencies. In approximately 200 pages, the author describes the evolution of railroad regulation; the regulation of railroad rates, service, safety, labor, combinations, securities and finance; the regulation of motor, water, pipe-line, and air transport; and concludes with a chapter on national transportation policy. One grows weary of the parade of summarized statutes, regulations, and cases. The other sections are, if anything, even more condensed. There may be some value in having students learn a mass of factual material, but in the reviewer's opinion this will not of itself give them a very deep understanding of the nature and significance of government intervention. Nor can this understanding be supplied by occasional appraisals of governmental policies in the light of the author's concept of sound economic and social policy, mature and humane though this concept be.

One hesitates to criticize an author for not doing what he has not attempted to do. This can hardly be avoided, however, in the case of a textbook which omits or neglects a number of the most intriguing and significant aspects of its problem. I do not see how it is possible to give students any real understanding of the relation between government and economic behavior without something more than incidental consideration of the ideological background, or what Thurman Arnold terms the "folklore," surrounding and conditioning the evolution of this relation. Nor does it seem to me that anything like sufficient attention is paid to the governmental institutions and procedures of control, particularly with reference to administration. The problem of sanctions is almost wholly

neglected. In short, what might be called the "process" of regulation is nearly lost sight of in the attempt to include all important substantive material.

It is only fair to say that these comments are no more applicable to this text than to the others in this field. The authors seem determined to "cover" the subject, at the cost of a more penetrating analysis. They have not been able to make a general application of the suggestive approaches employed by Commons, Hale, Arnold, Herring, Gaus, and a few others in more limited studies. Or perhaps it is the reviewer who is out of step.

HUGH L. ELSBREE.

*Dartmouth College.*

*Concept of Public Business.* BY FORD P. HALL. (Bloomington, Indiana: Principia Press. 1940. Pp. 223. \$4.00.)

Dealing with a hitherto neglected phase of business regulation, this volume presents a vital problem—What is "public" business? When is business affected with a public interest? Professor Hall treats of legal and administrative rather than economic factors. Accordingly he offers a comprehensive and critical discussion of statutes, court decisions, and administrative opinions, characterizing kinds of businesses affected with a public interest. The author also examines such questions as: On what do courts rely in determining whether a business is public or private? What constitutional limitations restrain regulation of public business?

The present distinction between public and private business is traced to an opinion of Justice Hale, rendered while he was Lord Chief Justice of England in 1671-76. Today it is found in the law of practically every nation.

Over the years, courts employed a variety of criteria, some of them inapplicable to modern legal problems. They include historical analogy, monopolistic privileges, indispensability of service or product, holding out of service to all, creating obligation to serve all, favorable treatment by the state in the form of charters, subsidies, and grants of eminent domain. Professor Hall points to the absurdity of including a small trucking business while "the gasoline business or the manufacture and distribution of food products" are private. He explains such "inconsistencies" as inherent in the attempt to set up a logical category (between public and private businesses) where no basis for such a distinction really existed.

Endorsed by the author are the famous dissent of former Justice Brandeis in *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932), and the majority opinions upholding the validity of the Bituminous Coal Act of 1937, *Sunshine Coal Co. v. Adkins*, 310 U.S. 381 (1940) and of price-fixing for the milk industry in *New York, Nebbia v. New York* 291 U.S. 502 (1934). They show a disposition to modernize the concept of public

business to "fit the needs of our present social and economic system" (p. 156).

In closing, Professor Hall suggests that courts approve "public business" regulations which correct economic "abuses" (p. 156) and invalidate those "detrimental to the welfare of the public" (p. 157). Thus bituminous coal and milk statutes corrected abuses of cutthroat competition. Statutes which merely reflect the efforts of "successful groups to gain for themselves an advantageous economic position" should be invalidated by the courts. Would not such a distinction be as vague and uncertain of application as the present one between "public" and "private" business?

The reviewer would go farther than the author in describing the concept of "public business" as a useful legal doctrine. Its value is twofold: (1) as an instrument for improvement of living standards, and (2) as a justification of government regulation in areas where private monopoly has narrowly restricted individual freedom of choice.

Professor Hall has performed a valuable service. He has shown how the concept of "public business" fails to meet present-day needs, and his plea that the courts adopt a more realistic treatment of the concept rather than the unsatisfactory "legal formulae" of the past is convincing. Excellent documentation contributes to the clarity and usefulness of the volume.

EDWARD W. CARTER.

*University of Pennsylvania.*

*We Hold These Truths.* EDITED BY STUART GERRY BROWN. (New York: Harper and Brothers. 1941. Pp. x, 351. \$1.25.)

*Democracy's Battle.* BY FRANCIS WILLIAMS. (New York: The Viking Press. 1941. Pp. 324. \$2.75.)

In *We Hold These Truths*, Stuart Gerry Brown brings together forty-four documents which, as he believes, include "the significant statements" of American democracy from its beginnings to the present day. Working, as he did, from an unambiguous majoritarian definition of democracy as a method for making decisions (thus not a "way of life," not a complex of imprescriptible rights, not an indefinable spirit of the laws), he might well have emerged with a unique contribution to our supply of political anthologies. Actually, however, his definition ("arriving at decisions by free discussion and majority consent") does not appear to have influenced his selections; and he passes by James Wilson, John Taylor of Caroline, the Woodrow Wilson of *Congressional Government*, and J. Allen Smith (to name four conspicuous examples of the sort of thing to which his definition would seem to commit him) for inaugurals, public papers, and court decisions—items of whose previous inaccessibility some of his readers will learn (from Brown's preface) with considerable surprise. On the other



hand, his brief introductory essay—largely an attack on the notion that the concept of democracy can be assigned an economic content—deserves the careful attention of every student of politics.

*Democracy's Battle* is an attempt to state the case for a British victory in the present war from the standpoint of democratic socialism. The author's procedure, with respect to those who denounce British democracy as a sham, is to plead the British guilty as charged and focus attention upon the chances of using the war as an occasion for reforming their ways. To this end, he would have the government take over complete control of the nation's economy, institute radical egalitarian reforms in its educational system, redistribute income in such fashion as to eliminate the present extremes of wealth and poverty, and take by taxation the funds it is now borrowing for prosecuting the war. Like John Strachey (but unlike Harold Laski), he goes so far in his condemnation of existing practices as to leave one wondering how, on his own principles, he can continue to support the war if the reforms that he demands are not instituted. He believes that, with American aid, Britain will win the war, and thinks (rashly?) that when the fighting is over the United States will be content to leave Europe in Britain's hands. That this would be a paradoxical result of a war fought to prevent domination of Europe by a single state, and that absolute power over Europe might corrupt Britain absolutely (thus rendering impossible the domestic changes he desires) are difficulties which Williams the democratic socialist gallantly refuses to press upon Williams the Englishman.

WILLMOORE KENDALL.

*Hobart College.*

## BRIEFER NOTICES

### AMERICAN GOVERNMENT AND POLITICS

Students of large-scale public administration have in recent years become increasingly aware of the important effect of administrative procedures on problems of organization and policy. Until the appearance of Comstock Glaser's *Administrative Procedure* (American Council on Public Affairs, pp. 207, \$2.50 paper, \$3.00 cloth), however, we had almost no literature on this important subject. Accordingly, Mr. Glaser's volume is sure of a warm welcome. It is extremely difficult to think through a new field with little or no aid from the literature. Dr. Glaser, an administrative analyst in the United States Department of Agriculture, has done a brilliant job in analyzing the flow of documents and its interrelations with administrative organization and policy. The necessity of procedural decentralization for the securing of genuine administrative decentralization is forcefully brought out; the various types of administrative analysis by

function, by sequence, and by organization are carefully outlined; discussions of program planning and management planning and administrative control delight the heart of the student who has been searching for just such discussions. It would be foolish to contend that the book is perfect. The reviewer questions very seriously the wisdom of Glaser's reverting to the use of the term "staff" to cover all of what Professor White has more aptly termed "auxiliary" agencies. He wonders whether Glaser's assumption that management analysis should generally be set up as "staff" function independent of "direct" administration is wise. He is sure that many more difficulties have been experienced with work unit control in the Forest Service than the account in this book indicates. Throughout the volume there is a little more tendency to "lay down the law" than is justified by our present experience. Most of these matters, however, are debatable. The fact that the reviewer has questions regarding them in his mind does not keep him from feeling a very genuine gratitude to the author for his substantial contribution to a new aspect of public administration literature.—GEORGE C. S. BENSON.

The student of the social process who would like to keep abreast of the best modern thought in the field of criminology in a specialized way will turn with interest and profit to "Crime in the United States" (*Annals of the American Academy of Political and Social Science*, Vol. 217, September, 1941, pp. ix, 237, \$2.00), in which he will find presented much of the relevant and reliable information about crime causation which can be set forth at the present time within the limited compass of one volume. Edited by J. P. Shalloo, the volume has been built upon the assumption that any proper approach to the baffling problem of causation must not only reject the single-factor explanation, but set up an attack that will cover many fronts. To this end, some eighteen carefully selected specialists have contributed their efforts, in a survey that traverses the field from widely differing points of view. While such a division of labor inevitably results in some duplication, it also produces insights, analyses, and measurements which enrich the understanding of the non-specialized student of the crime problem in a way that would be difficult to duplicate. Included in these treatments are sections on (1) "Crime as Social Reality," Jerome Hall; (2) "Enforcement of the Criminal Law," Bruce Smith; (3) "The Source of Criminal Statistics," Ronald H. Beattie; (4) "The Geography of Crime," Joseph Cohen; (5) "Crime in City and Country Areas," George B. Vold; (6) "The Biologist Looks at Crime," M. F. Ashley Montagu; (7) "The Psychologist Looks at Crime," Lloyd N. Yepsen; (8) "The Psychiatrist Looks at Delinquency and Crime," William Healey; (9) "The Sociologist Looks at Crime," Walter C. Reckless; (10) "The European Immigrant and His Children," E. H. Stofflet; (11) "The Negro and Crime,"

Guy B. Johnson; (12) "Crime in a Competitive Society," Morris Ploscowe; (13) "Crime and Business," Edwin H. Sutherland; (14) "Organized Crime," Alfred R. Lindesmith; (15) "Crime in Wartime England," Hermann Mannheim; (16) "Criminals' Views on Crime Causation," Albert Morris; (17) "Official Agencies and Crime Prevention," Elio D. Monachesi; and (18) "Organized Efforts in Crime Prevention," Nathaniel Cantor. This valuable volume belongs on the *must* list of every political scientist.—F. R. AUMANN.

Raymond Atkinson's *The Federal Rôle in Unemployment Compensation Administration* (Committee on Social Security, Social Science Research Council, pp. x, 183, \$2.00), is a most valuable book not only for teachers and practitioners of public administration, but also for students of American federal theory and practice. Although the author's primary concern is administrative practices and procedures, and the legislation upon which they are based, the broader implications of his study are never lost to view. The first three chapters, introductory in their nature, describe the basic features of the federal-state system of unemployment compensation, the perplexing administrative organization of the Social Security Board—a department within a department—and the influence of federal draft bills, administrative action, and legislative proposals upon state action. Mr. Atkinson concludes that the Social Security Board, more than any other federal agency, is exerting a powerful influence on a state government generally. The major portion of the book deals with the actual day-to-day job of administering our complicated unemployment compensation program. Problems incidental to the administration of the hundred per cent administrative grants, budget and grant procedure, federal standards of administration and their maintenance, and research and technical services are most fully discussed. An excellent chapter on "The Coördination of Social Insurance Agencies and Systems" concludes this part of the book. In the closing three chapters, Mr. Atkinson presents a full and fair account of the case for and against the continuance of our present federal-state unemployment compensation program. His preference for a nationalized system is based not only on the argument of administrative simplicity—at best a weak foundation for a social program as wide in its scope as unemployment compensation must be—but also on the more compelling social and economic factors. A brief appendix lists the main substantive features of the program as it now stands.—A. N. CHRISTENSEN.

*The History of Public Welfare in New York State, 1867-1940* (University of Chicago Press, pp. xviii, 410, \$3.50), by David M. Schneider and Albert Deutsch, brings to completion the work begun by Mr. Schneider in his earlier monograph, *The History of Public Welfare in New York State, 1609-*

1866. This volume traces the major developments in the public welfare field in New York during the last seventy-five years, describing in great detail the important legislative and organizational changes which have occurred there in response to changing economic and social conditions. The book is carefully written and well documented. The subject-matter is treated chronologically under the following heads: "Reconstruction and Industrial Expansion, 1867-94"; "Expanding Scope of State Supervision, 1895-1916"; "The Great War and Its Aftermath, 1917-21"; "State Consolidation and Control, 1922-29"; and "The Great Depression, 1930-40." The division seems excessive. At some places, especially in the last three sections of the study, it disrupts the continuity of the analysis and makes the treatment somewhat choppy and episodic. Unfortunately, recent developments are not analyzed critically. Changes are described, but not evaluated. The result is that little light is shed upon the experience which New York has had in dealing with the most important current problems of public welfare—problems of finance, overhead organization and management, state-local relations, functional integration, and the coördination of federal, state, and local responsibilities in the entire welfare field—PAUL T. STAFFORD.

John G. B. Hutchins' *The American Maritime Industries and Public Policy, 1789-1914* (Harvard University Press, pp. xxi, 627, \$5.00) compares Old and New World shipping and shipbuilding activities from the American Revolution to the World War. The volume surveys the rise of American maritime power, in the form of wooden sailing ships, then traces the subsequent loss of leadership to European metal and composite sailing craft and steamers. Going behind the formal figures on construction and operating costs, Hutchins seeks fundamental explanations for this change, in terms of technology, economic organization, and governmental policies. On the basis of this material, how might American maritime strength have been preserved? Hutchins argues that Congress should have authorized registry under the Stars and Stripes of inexpensive steamers built in Europe, instead of confining American companies to the high-cost products of domestic yards. To finance the operation of ships engaged in foreign commerce, he thinks that there should have been a carefully planned and stable system of operating subsidies. [Though recognizing the theoretical advantages in terms of efficiency of eliminating governmental intervention at sea, he appears to view official aid as being a practical national necessity in modern times. The text is closely documented, carefully organized, and in the main easy to follow. However, there are times when the layman tends to hurry over passages filled with unexplained terms, ranging from locust treenails to hackmatack knees, in quest of the linguistic safety of sections on the navigation laws.—WILLIAM BEARD.

In *Merit System Installation* (Public Administration Service, pp. vi, 58, \$1.50), members of the staff of Public Administration Service present a brief manual of suggestions and advice for those responsible for the inauguration of a personnel program. The report is not, as the title might imply, a detailed analysis of technical procedures to be applied in the inauguration of a merit program. For example, the treatment of position classification is confined to four pages, although admittedly for such a crucial phase of merit system installation one would expect a more thorough presentation. The real value of the report is to be found in the hints and tips on pitfalls to be avoided and fundamentals to be observed in the inauguration of a merit program. Appropriate emphasis is given to the public relations aspect. Even experienced personnel administrators frequently fail to realize that every step in the installation process has, or may have, public relations significance. The major subjects covered are study and clarification of the basic law, establishing and sustaining good will, organization of the personnel department, the adoption of administrative rules, the position classification and pay plans, recruitment and examination, and operating procedures. Almost one-half of the manual is devoted to appendices supplying representative forms and materials for routine personnel operations.—MARTIN L. FAUST.

In his *The Citizen and the Law* (Farrar and Rinehart, pp. 363, \$3.00), Morris Hadley presents a very elementary treatise on American government and law. The material falls into six major divisions entitled: "Law of Government"; "Law of Procedure"; "Law of Persons"; "Law of Property"; "Law of Organization"; and "Law of Crime," with one to five chapters in each division. The so-called Law of Government section contains about the same type of matter that one finds in a grade or high school civics text. The other divisions of the law are likewise discussed in a style and language which a layman can readily understand. The book is designed for the "citizen," that is, the average person rather than for a specialist in the field. The "setting" of the book is in New York. The author purports to describe the New York situation and then to indicate in footnotes the points at which the New York picture is not typical. The degree to which this localization of the subject-matter is carried is indicated by the inclusion of the Manhattan addresses of certain offices described. One is inclined to doubt whether New York so nearly typifies the states of the Union, especially in the field of public law. In his entire discussion of what he terms the Law of Government, the author found it necessary to use only two notes in the part on state and local government. No doubt many teachers of the subject would find their task much simplified if this degree of uniformity were actually attained. As a treatise setting forth quite general principles of what we call public and private

law, the book can be recommended. Apparently almost any legal situation that a citizen is ever likely to be interested in is covered. The reviewer is inclined to believe, however, that the method of stating a specific state provision and assuming that it is the general rule, rather than stating a general rule and perhaps illustrating with a specific provision, may mislead the uninitiated.—P. S. SIKES. •

The functional interplay of social and political forces between the nation and the states, "the large and the local," offers a fertile area for research. To it Winston Allen Flint has added a valuable case history. In *The Progressive Movement in Vermont* (American Council on Public Affairs, pp. 110, \$2.00), he shows "how powerful were the forces of the national progressive movement in battering down the bulwarks of conservatism in an essentially agricultural state" (p. 7). After three chapters on the characteristics and leadership of the progressive movement nationally, the remaining seven are devoted to the following specific influences in Vermont politics: caucus reform and corrupt practices acts; supervision of public service corporations; advent of the Progressive party; direct primary legislation; labor regulation; workmen's compensation; and reorganization of state government. Although the political and legislative history of these measures is carefully reviewed, greater use might have been made of legislative committee hearings and roll calls. The ardor for these reforms sprang from the press, from the governors of the state, many of whom, significantly, received training out of the state, and from a few pressure groups. The Republican party was forced, grudgingly, to accept these measures in order to bring liberal insurgents back into the ranks. As a study in political dynamics, too little attention is given to the rôle of organized business and of agricultural interests. The part played by labor groups, however, is considered adequately. Besides being well documented, the work is improved by a sizeable bibliography classified according to primary and secondary sources.—HUGH A. BONE.

In his *William M. Evarts* (University of North Carolina Press, pp. viii, 587, \$4.00), Chester L. Barrows, presents a full-length biography of one of the outstanding practicing lawyers of the Civil War and post-Civil War period. The author re-tells and embellishes with additional data the story of Evarts' career as Attorney-General, Secretary of State, and United States senator which was presented in 1933 in *The Public Career of William M. Evarts* by Brainerd Dyer. In addition, he presents many chapters based on records of Evarts' private law practice. Evarts was one of the adroit and not too scrupulous group of lawyers who sprang into prominence as tools of the perhaps even less scrupulous buccaneers of big business. Like others of his profession, he did not confine his activities to permanent

service of particular employers, but shifted from one to another as cases arose, accepting employment from litigants able to pay, and collecting enormous fees from them. In accepting retainers and in handling litigation, he seems to have been no more concerned than were his brethren about the morality of the issues involved. In spite of the apparent admiration of the author for his subject, therefore, the book may stir in the average reader only a limited enthusiasm for a man who, however able, was concerned primarily with building a private fortune by the adept use of the tricks of his profession, largely without reference to the public welfare. Because of the connection of prominent lawyers with railroad builders and manipulators and with men in other fields of business and industrial activity responsible for the development of modern enterprise, clinical studies of their activities are well worth making. Apart from the services which they rendered in public office, however, it may be seriously questioned whether they are entitled to the praise of the thoughtful historian.—CARL BRENT SWISHER.

If one believes that the historian should not merely present the facts, that he should not quarantine his opinions as if they were communicable diseases—in other words, that history should not be without criteria or significance—one will thoroughly enjoy Jeannette P. Nichols and J. G. Randall (eds.), *Democracy in the Middle West, 1840-1940* (Appleton-Century Co., pp. xvi, 117, \$1.25). The little volume is made up of essays by J. G. Randall, W. O. Lynch, H. C. Hubbart, J. P. Nichols, and J. D. Hicks, presented, in part, to the Mississippi Valley Historical Association in 1939. The essays are such a fine combination of scholarship, keen analysis, and good writing that one's only disappointment will be that they are so short. Randall's kaleidoscopic and provocative picture of the character of the Middle West; Lynch's comments on the peopling of the Valley, with his shrewd evaluation of the failures and accomplishments of its settlers; Miss Nichols' examination of the years from Lincoln to Theodore Roosevelt, with her emphasis on economic problems and her conclusion that the function of the Middle West has been one of compromise and adjustment; Hubbart's appreciative and critical portrayal of the years 1840-65; and Hicks' treatment of a Middle West come of age, a Middle West that is neither radical nor crackpot but that has learned its lesson from the East and is equally ready to make use of government to protect its own property interest—all serve to provide a book that one does not put out of mind when one puts it out of sight.—E. M. KIRKPATRICK.

Walter Gellhorn's *Federal Administration Proceedings* (Johns Hopkins Press, pp. 144, \$2.00) comprises four lectures by the research director of the Attorney-General's Committee on Administrative Procedure and is a genuine contribution to our thought on administrative law. The lectures

include much useful summary of the Committee's monographs on procedures in various federal agencies, and acute criticism of the stereotyped reactions (such as the "prosecutor-judge" complaint) against administrative regulation. A surprising acquaintance (for a lawyer's book) with political science literature and the political science approach is revealed in a final lecture on "The Infusion of Lay Elements into the Administrative Process." In view of the confusing nature of the report of the Attorney-General's Committee, this little volume is a refreshing means of giving us some of the findings and analysis of the able staff which worked for that committee. The chief objection to it is its brevity. We may hope for more from the same source on such problems as administrative collateral enforcement, the expedition of administrative judgments, and the publicizing of information on administrative policies. Mr. Gellhorn has so effectively combatted numerous American Bar Association charges (especially of the McGuire era) against the administrative process that he has not had time to consider adequately the question of how we lesser mortals fare at the hands of the Great White Father's regulatory agencies.—GEORGE C. S. BENSON.

The story of the experiment in compulsory arbitration in Kansas told by Domenico Gagliardo in *The Kansas Industrial Court* (University of Kansas Publications, Social Science Studies, pp. viii, 264) adds to the considerable literature on Kansas' industrial disputes which appeared during the period of the Court. This study, appearing now, may be prompted by current interest in industrial disputes, for it can hardly be said that the general features of the picture of the experiment, previously presented, have been altered. The contribution is one of detail and background, particularly of the part played by individuals and political forces. Its chief features are political and economic. One may experience little difficulty in seeing the pattern of procedure in the Court's investigative functions, but patterns in other procedures are less clear. To the frankly critical analysis given the Court's work, one should like to have added some criticism of the function assigned the Court of seeing that the industries of Kansas maintained uninterrupted production to meet local needs. Numerous helpful data and useful charts are embodied in the text, though one misses the convenience of "The Kansas Industrial Court Act" in an appendix. A good classified bibliography is presented.—H. C. COOK.

*Monetary Management Under the New Deal* (American Council on Public Affairs, pp. 380, \$3.75 cloth, \$3.25 paper), by Arthur Whipple Crawford, is an admirable presentation of the history of the evolution of our present managed-currency system, together with a clear statement of the problems and results of monetary management. The author has no axe to grind, and his material is offered in a thoroughly readable style.



The footnotes are copious and the bibliography is extraordinarily complete. After an introductory chapter is presented the story of monetary trends during the Hoover administration and of the money issue in the 1932 campaign. Then follows a statement of the long series of events beginning with the banking crisis of early 1933 and ending with discussions in Congress as late as 1940 over the place of silver in our monetary mechanism. To this reviewer, the most interesting aspect of the book is the impartiality with which Mr. Crawford has presented the conflicting views of those who participated in the determination of monetary policy in the first seven years of President Roosevelt's period of office, and the clear way in which he has discussed the constitutional issues raised in the various court tests of the validity of the new laws and orders.—JOHN G. HERN-DON.

On the whole, social scientists are compelled to draw their generalizations from the observation of uncontrolled phenomena rather than on the basis of experimentation as it is known in the physical sciences. Therefore a report of a controlled experiment, such as made by Herbert A. Simon, W. R. Divine, E. M. Cooper, and Milton Chernin in *Determining Work Load for Professional Staff in a Public Welfare Agency* (Bureau of Public Administration, University of California, pp. 94, \$1.00), should attract wide interest. The object of the study was to determine relationships between case load and accuracy in applying the law—all significant factors being measured quantitatively. Welfare administrators, legislators, and taxpayers should be interested in the findings. Many social scientists may be more interested in the methods by which unusual success was achieved in controlling extraneous factors. Thanks to the willing coöperation of the state relief administration, the authors have made a significant contribution to experimental technique in the study of administration.—EDWIN O. STENE.

In *The American Constitution* (Radcliffe Press, pp. 519, \$3.25), William L. Ludlow has tried to "provide an elementary study of the American Constitution through the interpretations of the Supreme Court . . ." (p. vii). It does not seem, from the results, that such a study can be made elementary enough for an undergraduate text and still give adequately the substance of the court decisions. The organization of the book is good; the style could be better. An appendix furnishes biographical data concerning the men who have sat on the supreme bench, though it errs in saying of Justice Brandeis: "He served until his death in 1939" (p. 493). Since all but a few notations are limited to bare citations of cases, they might have been footnoted rather than grouped at the end of the volume. Final judgment, however, of a text of this sort should rest upon a practical test in classes, not upon detached examination.—HILTON P. GOSS.

*Economic Problems of National Defense; A Symposium* (Indiana University, pp. 214, \$1.00) is a collection of twelve short discussions by George A. Steiner, editor, and ten of his colleagues in the Indiana University School of Business and the department of economics concerning business and industrial problems growing out of mobilization for war in the United States. Written primarily for the business man and to aid him in making adjustment to the emergency situation, the essays have a wider usefulness. The topics selected range pretty well over the field and include the problems of housing, the cost of living, labor, marketing, transportation, insurance, and monetary policies. College students and teachers will be particularly appreciative of the concise summary of the governmental mobilization machinery and controls of today and of 1918, with organization charts. The bibliography is well selected.—EARL L. SHOUP.

Julia E. Johnsen's *Compulsory Military Training* (The H. W. Wilson Company, pp. 266, \$1.25) is an excellent handbook for debaters and a splendid source of information for all who desire to know the arguments for and against compulsory military training. It is a compilation of carefully selected materials drawn from many current sources and prepared by leaders in the life of the nation. After a general introduction in which the historical and legal aspects of the problem are analyzed, the book sets forth the affirmative and negative arguments in turn. This is followed by a detailed outline of the materials presented. The last twenty-two pages are devoted to a carefully organized bibliography of the subject.—DANIEL B. CARROLL.

Zoning technicians, developers of subdivisions, and those who have the responsibility for drafting subdivision regulations will welcome Harold W. Lautner's *Subdivision Regulations: An Analysis of Land Subdivision Control Practices* (Public Administration Service, pp. xvii, 346, \$3.75). The book is a compilation of existing platting regulations covering all subjects from the procedure of securing plat approval to what Lakewood township, New Jersey, requires in the erection of street signs in its subdivision developments. The excellent table of contents may be used as an index to find any subject quickly. Under each subject, such as Street Grades, or Roadway Widths, the reader will find a general statement and, immediately following, an appendix listing all regulations by state and local governments. Mr. Lautner has made a valuable contribution to his subject.—KENNETH P. VINSEL.

#### FOREIGN GOVERNMENT AND POLITICS

*Contemporary Europe; A Study of National, International, Economic, and Cultural Trends* (D. Van Nostrand Co., pp. xiv, 670, \$5.00) is a sym-

posium to which thirty authors have contributed, with Joseph S. Roucek as editor. Of the numerous contributors, at least half are historians, while the others are, in the main, sociologists, economists, and political scientists. For a project of such proportions, the exposition proceeds logically, and the book is reasonably well integrated. The period covered is that between the two world wars, and the attempt is made, in the words of the editor, "to synthesize the genetic development of Europe in its political, economic, and cultural aspects from 1918 to the present time." Of the thirty-three chapters, each written by a person of specialized interest, nineteen concern individual European states or groups of states, including the U.S.S.R. and the Near East. Each of these nineteen chapters follows a fairly consistent pattern, as follows: geographical setting; ethnography (including minorities problems); situation at the end of World War I; political affairs and political development, 1919-40; economic and cultural development (including, first, industry, trade, agriculture, and natural resources; and, second, social problems, literature, art, and science); imperial and colonial problems; and, finally, the impact of World War II. The base of the book is broadened by the inclusion of chapters on such subjects as the papacy, the new ideologies, military strategy (setting forth the importance to strategy of a study of military geography), science and technology (different but realistic), the arts and music, philosophy, religion, literature, and the social sciences and education. Helpful bibliographies are included, not only at the end of chapters, but occasionally at the end of sections as well. Occasional minor errors have been noted. There is some repetition, probably quite unavoidable in an undertaking of this nature. And some question may be raised concerning the weight and space given to various countries, as, for example, slightly more than one page devoted to Portugal proper, as compared to nearly fourteen pages for Hungary. The references and notes are collected at the end of the chapters—always a bothersome feature. The cartography by R. E. Falconer, although somewhat unconventional, is characterized by relative simplicity and is designed to emphasize such economic and population factors as density, raw materials, explosive minorities, etc. . . . On the whole, the volume is well done. No attempt has been made, probably wisely, to present maps relating to the present war. The book should be of service particularly to students and teachers of international relations and of modern European history.—IVAN M. STONE.

Paul M. A. Linebarger's *The China of Chiang K'ai-shek* (World Peace Foundation, pp. vii, 449, \$2.50) is a book which no student of Far Eastern affairs can, and no student of government should, do without. It is more than a supplement to the author's earlier work, *Government in Republican China* (1938); it is a painstaking and dispassionate analysis of the de-

velopment of political thinking and political practice of a people in the midst of a life and death struggle for survival. In this book, Linebarger shows that rare quality of being able to dig down into available source materials; to collect the facts and present them in orderly fashion; and then to stand back and view the picture without loss of perspective. The thoroughness of his use of materials is impressive: in his footnotes he gives the honest man's gesture to other men's hard work, even when that work is more superficial than his own; his documents, admittedly translations made by others (though one has the feeling that the author knows more of the Chinese language than his modesty permits him to claim) are carefully cross-checked; his appendices—perhaps a bit too long and broad in scope—include extraordinarily valuable material, especially the notes on personal interviews with Generalissimo Chiang K'ai-shek and others. A particularly valuable addition is his glossary of Chinese terms in both English and Chinese, for which every Chinese as well as foreign scholar should be grateful. The body of the work represents, of course, a task of assemblage of facts which someone, somewhere, sometime had to get together and make available to English-reading students of government and of Far Eastern affairs. But these chapters on the constitution; political, consultative and administrative organs; provincial, local, and special area governments; the Kuomintang, Communist, and minor parties; and on the governing institutions of the Japanese and pro-Japanese are not merely an assemblage of facts. The facts are—one is tempted to say—diagnosed as presented. The two concluding chapters on extra-political forces and on Sun Yat-sen and Chiang K'ai-shek not only afford an excellent survey of such noteworthy and probably significant forces as the Chinese Industrial Coöperatives and the Mass Education movement, but also give us the necessary orientation of these phenomena with the early days of the Nationalist movement. Throughout, the author never permits himself to get lost in the forest; the analyst, the student of government in its broader aspects, is always present.—ERNEST B. PRICE.

Out of war-time Cambridge (England) comes an astonishing piece of Nazi propaganda—C. W. Guillebaud's *The Social Policy of Nazi Germany* (Macmillan Co., pp. viii, 134, \$1.25). The book claims to be an objective account of the various aspects of Nazi social policy, but in reality it gives a distorted picture, continually stressing alleged achievements while excusing darker aspects, so that protestations of the author's own liberal views cannot but remind one of Antony's "I come to bury Caesar, not to praise him." Guillebaud chiefly relies on official statistics and the rather obscure *Memoranda* of the Imperial Policy Group, the editor of which, de Courcy, stated in 1939 that Nazi labor policy had gained the "general con-

tentment" of the working classes. Guillebaud accordingly affirms that this policy had brought about the "atmosphere of hope and creative activity which characterized Germany between 1933 and 1938," which happy development was "interrupted" when the "external reactions to Hitler's foreign policy" led to a "national emergency" forcing the régime to cancel part of its social policy. It has escaped the author's attention that this "national emergency" was the unavoidable and, indeed, foreseen result of general Nazi policy from the outset (incidentally, Germany left the Disarmament Conference and the League in 1933 and not in 1935, p. 46). There is an 'objectivity' which is really propaganda in disguise. Totalitarianism, in its propaganda abroad, specialized in it and made many a foreigner—frequently himself unconscious victim of this propaganda—its tool. We must indeed avoid wishful thinking and take successes of totalitarian régimes seriously. But by all means let us first ascertain the facts of the situation. Has the German worker, even before 1938, really gained economically? Only if this had been ascertained could we approach the problem of masses preferring "security" to "freedom." At this early moment, it seems very difficult to obtain the data necessary for an unbiased answer. This book proves that even occasional visits to Germany by foreign experts may not yield sufficient knowledge for impartial judgments. Implicitly, however, it shows why France fell and other democracies might follow.—JOHN H. HERZ.

The evolution of industrial society up to the threshold of our day has provided economic theory with little opportunity for assessing the material significance of ideology and violence. This fact may explain the dearth of competent studies of the economics of totalitarianism. Maxine Y. Sweezy's *The Structure of the Nazi Economy* (Harvard University Press, pp. xvi, 255, \$3.00) represents a most welcome addition to the small body of serious writings on the topic that have appeared thus far. Meticulous research and sober reasoning give the book distinction. Much revealing information has been culled from official German statistics, which the author found "fairly reliable if used carefully and critically." While no major aspect of the subject-matter has been omitted, the treatment is selective, and in certain parts somewhat sketchy. The chapters devoted to the growth of governmental control over business, the status and earnings of the large corporations, the effects of financial policies, and the development of national income, consumption, and social welfare stand out as the best. Transportation and cartelization, on the other hand, are dealt with in less than ten pages each. Given the principal objective of Hitler's strategy—"preparing for preparedness," as I called it in my *Government in the Third Reich*—the economic policies pursued make grim

sense. In Dr. Sweezy's appraisal, "The short-run achievement of the Nazis is evident." But though financial difficulties "do not seriously threaten the system," its operation has made the consumer "the orphan child of Nazism." What factors induced him to put up with it, how he was able to retain his morale in spite of the sacrifices demanded of him, why after two years of war he is still going on—these questions remain open. Perhaps it is a hint to the political scientist that even so inquisitive an economist as Dr. Sweezy declines to venture an answer.—FRITZ MORSTEIN MARX.

Robert Ergang's *The Potsdam Führer* (Columbia University Press, pp. 290, \$3.00) is at once a biographical study of Frederick William I and an analysis of his official policies, particularly his policy with regard to the army. The author claims significance for his work with the statement that Frederick William I has been neglected by English and American writers, although he is the "real father of the army of modern Prussia" and is responsible for casting "the whole Prussian nation into a military mold, fixing on his subjects military habits which have continued to characterize Prusso-Germans to this day." Following introductory chapters, Mr. Ergang describes Frederick William's policies with regard to the army, the civil service, education, religion, the administration of justice, economic and political relations with foreign states, and the training of the Crown Prince. In almost every connection, the emphasis which Frederick William placed on the military is revealed. He derided those who "say that they will obtain land and people for the king with the pen" and asserted his belief that "it can be done only with the sword." On the basis of this belief, he made the development of a strong army and a full war chest his primary objectives, reorganizing the administrative services of the government so as to knit the country more closely together and provide greater revenues, and strictly regulating economic activities and foreign trade in the interest of the power of the state. He enforced the greatest parsimony in connection with various non-military activities of the government, and in the royal court itself, so as to leave more money for the army. Though in population Prussia was only the twelfth largest state in Europe, he made his army fourth in size and first in effectiveness. Meantime he had instructed the tutors of his son, known to history as Frederick the Great, to impress on him "the conviction that nothing on earth can earn him more glory and honor than the sword and that he will be a contemptible creature if he does not love the sword and does not seek glory in it and through it." The book is timely and substantial. Particular attention might be called to the introduction, which contains numerous quotations from German statesmen and writers, historical and contemporary, revealing the penchant of the Prussians for things military.—VERNON VAN DYKE.

*British Unemployment Programs, 1920-1938* (Committee on Social Security, Social Science Research Council, pp. 385, \$2.75), by Eveline M. Burns, is essentially an interpretation and appraisal of the various policies and programs adopted in Great Britain for coping with the vast unemployment problem of the last two decades. The author is peculiarly well-fitted for this task. A former official of the British Ministry of Labor, Mrs. Burns has long been an outstanding authority on social security in this country. She approaches her subject with an understanding no one but a native Britisher could have, but from the perspective of an able scholar, whose chief interest, beyond discovering and telling the truth, lies in the improvement of social security in the United States. The study is of greatest value in connection with the development of governmental policies in relation to unemployment, both in Britain and in the United States. The book, and particularly the concluding chapter, however, is very suggestive also for an understanding of the social security movement and of the forces which are producing a social service state and the major implications of this development. While not the last word on every phase of the British unemployment programs, the book is easily the best on the subject. It is directed, however, to the specialist rather than to the general reader.—EDWIN E. WITTE.

In his *Ideas and Ideals of the British Empire* (Cambridge University Press, pp. 167, 3s. 6d.), Ernest Barker presents a concise and penetrating analysis of the most important contributions of the British Empire to the art of government. Although the Empire, he admits, originally resulted from two driving motives, the desire to escape governmental restrictions through overseas settlements and the desire for profitable business investments, it has been transformed during the last hundred years into "a subtle and intricate structure for the development of human freedom." Among the factors which have wrought this transformation, the author gives high place to the ideas embodied in the English common law and equity. The former places emphasis upon the liberty of the subject, while the latter, with its idea of trusteeship, emphasizes the idea that the right to govern is held in trust for the benefit of the people. These concepts carried throughout the Empire were the ideals under which, according to the author, all parts of the Empire have marched toward greater freedom. The Dominions have already reached the goal of complete self-government. India is drawing "closer and closer to responsible self-government and full Dominion status." Even the colonial, or dependent, empire, through the device of "indirect rule," is already gaining experience in democratic government. Dr. Barker has written a valuable essay. He shows keen insight into contemporary imperial problems. He glosses over no British mistakes, and he presents his claims in behalf of the Empire with becoming modesty.—ELMER D. GRAPER.

*Statistical Activities of the American Nations, 1940* (Inter-American Statistical Institute, pp. xxi, 842) is a compendium of information compiled for the first time concerning statistical work and organizations in twenty-two North and South American countries. It is edited by Elizabeth Phelps under the direction of the Temporary Organizing Committee of the Inter-American Statistical Institute. The data on each country include a summary of statistical activities, the national population censuses, the system of official statistics, a list of statistical publications, and an article written in the official language of the country on the statistical activities. The section on the United States covers 143 pages and summarizes in convenient form the many statistical activities undertaken in this country. The appendices include a biographical directory of statistical personnel in the American nations other than the United States and notes on the statistical sources of Latin America. With the present emphasis on close economic and social relationships between the countries of the Western Hemisphere, collaboration in providing accurate comparable statistical data is imperative. The Inter-American Statistical Institute is to be complimented on the solid foundation laid, in this compendium, for coöperation between the experts of the respective countries. Improved methodology in furthering the practical use of statistics in the solution of social and economic problems common to these nations is an important step in cementing friendly relations.—JOHN P. SENNING.

*Labour's Aims in War and Peace* (Rand School Press, pp. 156, \$1.75) is a collection of statements issued individually or collectively by Clement Attlee and other British labor leaders during the first nine months of the present war—statements of historic importance as part of the effort of a great movement to define its position. On the one hand, labor supported the war, while criticizing Neville Chamberlain's methods and attacking his aims; on the other hand, it issued a socialist programme, while denouncing Soviet aggressions. In the present, it repudiated armed attacks on the sovereignty of small states; for the future, it looked forward to their voluntary abdication of that sovereignty in favor of an international authority strong enough to enforce the peace. The most symptomatic omission, in view of later developments, is the complete absence of French collaborators. The most important contributions, on the side of political theory, are those of Leonard Woolf on international government and Harold Laski on the relation between war and capitalism.—W. H. WICKWAR.

The literature on the British government in war-time is enriched by the publication of *The Labour Situation in Great Britain* (International Labor Office, pp. 56, \$0.25). This report was prepared by Messrs. A. D. K.



Owen and Neil Little. While the labor policy of the British government in the period May–October, 1940, is the main theme, the booklet covers broadly many other aspects of economic affairs and describes the governmental agencies that have been set up to administer the program. The policies designed to insure an adequate supply and distribution of skilled workers in spite of military service, the problems of wages, hours, and working conditions, the diversified employments being entered by women—these and many other phases of war economy are described. The authors reach the conclusion that, for the great majority of the population, the war has meant an appreciable, but not serious, reduction in the standard of living.—JOSEPH R. STARR.

In addition to being a great repository of books, the Library of Congress often publishes useful volumes. A noteworthy recent addition to this latter service is Annita Melville Ker's *Mexican Government Publications* (Government Printing Office, pp. xxi, 333, \$1.25), carrying the descriptive subtitle, "A Guide to the More Important Publications of the National Government of Mexico, 1821–1936." The material is partially in Spanish and partially in English. More than thirty great collections in the United States and Mexico were combed for titles. The general arrangement is according to legislative, executive, and judicial branches, with many separate offices and items listed under the first two. The volume is a valuable bibliographical tool.—RUSSELL H. FITZGIBBON.

The program of American aid to Great Britain will hardly be undermined by Giseler Wirsing's *The 100 Families That Rule the Empire* (Flanders Hall, pp. 116, \$1.00), although that was undoubtedly intended to be its effect. It is well known that both the author and the publisher of this book are registered with the State Department as agents of the German government. The book is a vitriolic attack upon the British, designed to show that a small clique of British capitalists are responsible for the present war. It presents nothing new in the way of analysis of British government and society, and the facts to elaborate its argument are lifted, with acknowledgement, from Simon Haxey's *England's Money Lords* and from the publications of the extremely left-wing Labor Research Department. The chief interest of this propagandist tirade is the pseudo-proletarian philosophy pervading it.—JOSEPH R. STARR.

#### INTERNATIONAL LAW AND RELATIONS

Seven members of the University of California faculties, in search of certain aspects of truth and American widespread comprehension thereof have collaborated in the production of *The Renaissance of Asia* (University of California Press, pp. xi, 169, cloth, \$1.50, paper, \$1.00). Six of the

collaborators contributed to a series of lectures delivered in Los Angeles during the spring of 1939; the seventh, Professor Malbone W. Graham, composed the discriminatingly analytical preface to the volume. The topics discussed, and those discussing them, were: "India under the New Constitution," Frank J. Klingberg; "The Rôle of Indo-China in Asia," Melvin M. Knight; "Domestic Factors in Japanese Foreign Policy," Kazuo Kawai; "Japan's Aims and Aspirations on the Continent of Asia," N. Wing Mah; "Soviet Russia in Asia," Robert J. Kerner; and "The Future of China," H. Arthur Steiner. All of the topics were competently and interestingly (one of them brilliantly) presented; which is saying a great deal, considering the factors of space and time involved, in conjunction with the racial, social, religious, and political complexities of each of the areas considered. Many might prefer estimating the number of angels which a needle point can hold, or attempting a definition of Truth while standing on one foot, to discussing, in an average of twenty-eight small pages, the significant domestic and international aspects of contemporary India or Indo-China or China or Japan or Siberia. Not a single error of fact has been noted—and only one typographical error. After reading Professor Knight's primarily economic account of Indo-China, which account was prepared two years before the most recent unpleasantnesses in that area, one is even less surprised than before at the ease with which the Japanese grabbed France's plum for their "co-prosperity" basket. Of the innumerable explanations of Nippon's wheels, and why they go round often counter-clockwise, the best brief one read by the undersigned is that by Mr. Kawai. To be entirely trite, it alone is worth the price of the volume in either of its bindings! Those who may be hazy concerning Asiatic Russia's advances in power northward and eastward under Soviet leadership will do well to read Professor Kerner's masterly survey, while others who "philosophically" fail to see a difference between the Japanese as would-be conquerors of China and earlier (and more successful) comers to China in that capacity will profit from cogitating Mr. Steiner's informedly optimistic analysis. Not only is the University of California to be congratulated upon the publication of so valuable a work by members of its faculties; it is to be congratulated upon having a press which puts forth volumes as distinguished in format as is *The Renaissance of Asia*.—HARLEY FARNSWORTH MACNAIR.

Florence Horn's *Orphans of the Pacific* (Reynal and Hitchcock, pp. v, 316, with 32 photographs, \$3.50) is the by-product of the June, 1940, *Fortune* article on the Philippines. It is well described by the publisher's "blurb" as "a grand piece of reporting, based on direct observation and a keen sense of values, and blending information and entertainment in a manner that is a reader's delight." In type, the volume can be bracketed

with the productions of other American journalists who have "covered" the Philippines: Charles Edward Russell, Nicholas Roosevelt, and Katherine Mayo, for example. Miss Horn has discussed a number of the perennial Philippine subjects as well as some of the newer problems which are currently worrying both Americans and Filipinos, such as the economic effects of the Tydings-McDuffie Act and the "windfall" coconut excise tax revenue, Japanese economic and political penetration, defense, and the difficulties which the United States may have in ridding itself of the Philippines in 1946 should it still wish to do so at that time. In the Philippines, Miss Horn collected a surprising amount of information. While much of it is scarcely above the level of gossip, her facts concerning the basic Philippine industries are important, apparently accurate, and in some instances not easily obtainable elsewhere. Her analysis of the economic aspects of the American-Philippine relationship is worthy of serious consideration. So is the reasoning upon which she bases her conclusion that the Philippines are not yet prepared to stand alone as a really independent nation. It is unfortunate that a book as worth while in many respects as is this one should contain statements which probably will injure feelings and arouse indignation in the Philippines. Arrogance of spirit and brutality of expression may provide the "entertainment" to make a reporter's story sell in the United States. More than any other one thing, however, they harden the Filipinos' determination to separate themselves from America, and render difficult the existing Philippine-American relationship. These qualities in Miss Horn's book and the dozen otherwise unimportant errors which the volume contains reveal its superficiality. *Orphans of the Pacific* is indeed "a grand piece of reporting" in the American style; but it is not a true picture of the Philippines.—J. R. HAYDEN.

Mark J. Gayn, author of *The Fight for the Pacific* (Morrow, pp. xii, 378, \$3.00), was born at Barim, "a tiny Mongol-Chinese town nestling at the foot of the Khingan range." In 1928—after having lived at Vladivostok, Shanghai, Canton, and other Far Eastern centers of activity—he entered upon a newspaper career which included service from 1934 to the summer of 1937 as English editor of the Japanese news agency "Rengo." This valuable background makes his study of recent Far Eastern developments something more than the usual "newspaper man's book." Well organized and free from unnecessary repetition, the story moves at a lively pace; yet the generalizations seldom go beyond the evidence, and the few errors that have been noted relate to comparatively unimportant details. Japan, short in natural resources but long on resourcefulness, is shown to be a persistent threat to peace, not only in the Pacific but in the world. The frankly opportunist policy of Tokyo rests upon a fixed determination

to dominate East Asia, and on this point there is virtual unanimity among army officers, bureaucrats, politicians, and business leaders. Mr. Gayn's realistic grasp of this fact gives clarity to his treatment: "Throughout this book the term 'moderates,' when applied to groups in Japan, . . . is never intended to indicate that such groups or individuals are opposed to aggression. There are few Japanese who do not wish to see Nippon's flag planted in China, Indo-China, or the Dutch East Indies. But the 'moderates'—in contrast to the 'extremists' and 'jingoists'—wish to take no aggressive move if it entails excessive costs or military risks" (p. 17, note).—G. NYE STEIGER.

Students of Far Eastern affairs are indebted to the International Secretariat of the Institute of Pacific Relations for yet another competent addition to its Inquiry Series: Robert W. Barnett's *Economic Shanghai: Hostage of Politics* (Institute of Pacific Relations, pp. xiii, 210, \$2.00). This study gets together within the covers of one book fugitive material too valuable to be lost. While the book is primarily and admittedly a research project, and hence includes of necessity a mass of statistical and other factual data which make at times rather heavy reading, its analysis of the effect of war and politics on that powerful economic center, Shanghai, is admirable. The first chapter on the siege of Shanghai is an unusually lucid, even though sparingly documented, record of a significant epoch marking a profound change in orientation of West and East. The chapters on labor and industry are as much an indictment of greed, avarice, and a callous disregard for human suffering on the part of those who sought to make profit by the misfortune of others in that unhappy city as it is of the stark militarism of Japanese continental policy. The sections on currency and finance and on commerce and shipping at Shanghai make less exciting reading, but contain material no less significant. The brief concluding chapter, bearing the title of the book, is a competent summation. The reader is left with a feeling that the old Shanghai is gone forever and that the future of the new Shanghai waits on developments over which its citizens have no control.—ERNEST B. PRICE.

Those responsible for undergraduate courses in Latin-American political affairs and history will find the problem of respectable textual assignments in English much less difficult since the appearance of A. Curtis Wilgus' *The Development of Hispanic America* (Farrar and Rinehart, pp. xviii, 941, \$4.75). The author generally follows an orthodox plan of presentation. There are divisions dealing with "Backgrounds" and "Discovery," "Colonial Development," "Revolutions for Independence," chapters on the development of each country during the national period (in which are considered political history, economic development, and

development of the arts), and finally a division devoted to "International Relations in the Modern Period." The appendices consist of an excellent glossary of Latin-American terms, abstracts of the constitutions past as well as present, and a "Bibliographical Essay" of some fifty pages dealing with publications in English and in foreign languages. In addition, there are reference lists of books in English at the end of each chapter. In the opinion of the reviewer, Professor Wilgus' text has more to justify its claim to leadership in its class than the reference paraphernalia mentioned. The section on colonial development is a boon to teachers struggling with the task of presenting the problems of colonial administration with accurate simplicity. The same may be said of the chapters dealing with the revolutionary period. The summaries of the political developments of the states during the national period, found in the chapters on the various countries, are characterized by the same accurate simplicity. The clear and concise way in which these matters are handled leads to the conclusion that the book is the most serviceable for those teaching Latin-American affairs.—WILLIAM M. GIBSON.

How to forestall Nazi use of economic weapons for political purposes is Percy W. Bidwell's problem in his pamphlet, *Economic Defense of Latin America* (World Peace Foundation, pp. 96, cloth \$0.50, paper \$0.25). Although urging a variety of measures to mitigate the hardships of war for the vulnerable semi-colonial economies of Latin America, Mr. Bidwell concludes that British victory is essential to the protection of the United States from Nazi infiltration below the Rio Grande. Hemispheric self-sufficiency is dismissed by observing that (1) a German triumph might make it unacceptable to our Latin-American neighbors; (2) a British victory would make it unnecessary; and (3) it is impracticable in any case. The discussion is admittedly and purposely elementary, being designed for the non-specialist in Latin-American affairs—a category which includes too many political scientists. An irrelevant chapter on German propaganda does not detract from the usefulness of the publication.—WILLIAM T. R. FOX.

*The Diplomatic Recognition of the Border States, Part III: Latvia* (University of California Press, pp. vii, 399-564) is the third in a series of studies by Professor Malbone W. Graham dealing with the borderlands of the Russian Empire. Like the first two, this is an account of a struggle for diplomatic recognition following a successful movement for independence from Russia. Professor Graham concentrates on the developments of the four years immediately following the Russian Revolution. As the Russian Empire crumbled and the Letts were making every effort to establish the foundations of a stable government, there was little sym-

pathy among the Great Powers with the idea of Lettish independence. The leaders of Latvia were active at the Paris Peace Conference and pressed their claims before the Baltic Commission created by that conference. No important change in the attitude of nations was apparent, however, until after the Treaty of Riga made by Latvia with Russia in 1920. Latvia was admitted to the League of Nations in 1921, and recognition was subsequently extended by a number of states not members of the League, including the United States. The book is well written, and documentation throughout is excellent; many of the documents cited in the footnotes are given in textual form in the latter part of the book. There are also two appendices, one on "The United States and Latvia, 1918-1919," and the other entitled "Latvia and France, 1918-1921."—NORMAN L. HILL.

Albert B. Corey has based his study, *The Crisis of 1830-1842 in Canadian-American Relations* (Yale University Press, pp. 203, \$2.50) on an extensive use of contemporary American newspapers and periodicals and of British, American, and Canadian state papers. The main theme of this latest addition to the Carnegie Endowment series on "The Relations of Canada and the United States" is the effect of the Canadian rebellion of 1837 on British-American and Canadian-American relations, although the penultimate chapter on the Webster-Ashburton Treaty extends the range of interest to all the problems settled by that treaty. The author assumes that the widespread American sympathy for the Canadian rebel cause was unjustified, and that therefore the official policy of non-intervention was fully warranted. Unfortunately, no attempt is made to analyze Canadian conditions and opinion, and accordingly the case for non-intervention is not conclusively proved.—H. G. SKILLING.

#### POLITICAL THEORY AND MISCELLANEOUS

The purpose of Henry M. Magid's *English Political Pluralism; The Problem of Freedom and Organization* (Columbia University Press, pp. 100, \$1.25) is to show the contribution of pluralist theory in general, and of the English pluralists Figgis, Cole, and Laski in particular, to the analysis of freedom and the democratic state. Having evaluated the theories of the three Englishmen, whose respective approaches represent three trends in British pluralism, Mr. Magid presents his own view of "the significance of pluralism for political theory." Referring critically to Cole, he points out that pluralism "is concerned with more than mere organization and . . . does not indicate any definite plan of action." Its contribution, he says, consists primarily in an extirpation of "organic state theories" and in formulating "the fundamental content of freedom and democracy" in the light of a pluralistic conception of authority. The gist of the author's conclusion is that democracy is pluralistic because it does not insist on

*Gleichschaltung* of groups as well as individuals. The division of attention between individuals and groups in his definition of political freedom and in his discussion of popular control of government is a significant and well warranted shift of emphasis springing from an appreciation, not only of the political importance of interest groups, but also of the fact that man is not wholly accounted for as an individual. And in showing what distinguishes the government of the state from the government of groups within the state, the author sizes up quite accurately the state's position among other groups as to the functions which it performs. He fails, however, to appreciate fully the preëminent place which the state occupies in man's allegiance. Mr. Magid is too preoccupied with the diversity of human interests. Moreover, he seems to assume tacitly that man's allegiance depends on a better calculation of his interests than he is really capable of. The weight of political tradition, the persistence of political thought- and behavior-patterns cannot be brushed aside by a denial of the validity of such abstractions as the general will and the common good. There still remains the very practical common good of political stability, the advantages of which man is certainly just as capable of perceiving in ordinary circumstances as he is of knowing where his non-political interests lie. The mere extirpation of such metaphysical trappings as the general will, the common good, and the social contract does not disprove the facts to which they refer. It does not deny the existence of political unity in the tacit understanding to abide by due processes of law, whatever the content of a given law may be. And this underlying unity is not explained by the paradox of unity-in-diversity, adduced by Mr. Magid, any better than by the variations of "formal *a priori* unity" which he rightly criticizes.—HENRY JANZEN.

Amid the flood of confused and ephemeral books on the conflict between Democracy and Totalitarianism, it is pleasant to encounter one of exceptional quality. This is *Democracy Is Different* (Harper and Bros., pp. 230, \$2.50), edited by Dean Carl J. Wittke of Oberlin College. The volume consists of chapters originally presented as a series of public lectures by various scholars in economics, history, philosophy, political science, and letters. The plan of the book is to contrast the nature and operation of Democracy, Communism, and Fascism by presenting an analytical and historical account of each. Although space compels brevity, the plan is a good one, and it is carried out admirably. The exposition of democratic origins by Dean Wittke and the discussion of the power and appeal of Marxian philosophy by Professor Oscar Jászi are excellent. Other chapters dealing with the origins and operations of Communism and Fascism are lucid and concise. In spite of its scholarly calm, however, the book is suffused with a sense of anxiety. Designed to "defend" democracy, the

admission that democracy needs defense affects the argument of every chapter. In common with most of us who defend democracy these days, the authors of this book are afraid. They are afraid that the people who still live in democracies will not defend them. They are afraid that people who have lost their democracy, as Lord Bryce said, will soon forget it and will not greatly miss it. They are afraid that the state the world is in may constitute a *bona fide*, and not merely a *prima facie*, case against democracy. They are afraid that democracy does not possess capacities for adaptation, and the authors generally agree that adaptation is essential. They are afraid of the effect of years of criticism of democracy among ourselves, and of the effect of our preoccupation with its shortcomings. Defenders of democracy can ponder with profit Flaubert's dictum: "We cannot disparage those we love without alienating ourselves from them; we must not touch our idols, the gilt sticks to our fingers." This book clarifies in many ways the state of the democratic faith in our times.—HAROLD W. STOKES.

*The Psychology of Social Movements* (John Wiley and Sons, pp. 270, \$2.75), by Hadley Cantril, is a study of why men act the way they do in social groups. Part I presents a systematic and basic conceptual framework for the analysis and explanation of any social movement, to show a person what to look for when he sets out to understand any such movement. In Part II, the author proceeds to an analysis, according to the pattern just presented, of five particular social movements, all more or less spectacular, which he regards and presents as prototypes of many other movements, namely, the Negro lynching mob, Father Divine's "kingdom," the Oxford Group, the Townsend Plan, and the Nazi party. The chief purpose of the study is the search, through the tangle of mental context and motivation, for concepts that will account for the behavior of man in his social life, and the author discards various theories for a "purely functional" explanation. This is presented in basic pattern form, both as a thesis and for the analysis of any social movement. In addition to his analysis of the five typical social movements that he has chosen and investigated, Dr. Cantril essays to fulfill a sense of responsibility which he thinks the psychologist bears to express specific value judgments concerning the merits of any social movement that he may be privileged to analyze. The book really embodies, then, three elements: a general psychological pattern, of a functional character, for appraisal of motivation in social groups; an analysis of five notable movements from this viewpoint; and an evaluation of the merits of each of these. The book is written in a direct, lucid, interesting style and contains a wealth of specific factual material.—H. R. BRUCE.



As an educational adventure, institutional economics has made haste slowly. Few introductory texts have appeared in the field. It may be that this is due to a more or less normal cultural lag; or it may be that the diffusive character of institutional writing and the lack of a well-defined school of thought or a coherent and disciplined body of knowledge have discouraged attempts to introduce the beginning student to the field of economics through the institutional approach. In Russell A. Dixon's *Economic Institutions and Cultural Change* (McGraw-Hill Book Co., pp. 529, \$3.00), we have a new introductory text. Six institutions are discussed: property, the price system, free enterprise, technology, the corporation, and consumption. This list by itself will raise questions as to the definition of "institution," and it is readily apparent that a book limited to these topics does not present a comprehensive introduction to the field of economics. Nevertheless, the material is well organized and clearly written, and it includes a good discussion of property—the omission of which is the chief defect of the leading introductory text in institutional economics (*Economic Behavior*). A part of the book is devoted to each institution, and there is a selected and briefly annotated bibliography at the end of each part. Also, at the end of each part, several paragraphs are devoted to an "evaluation" of the institution just discussed. The omission of production, land, agriculture, labor, and the market, in the sense that none of these factors is given well-rounded treatment, is a genuine defect. Of these, the market receives most attention, in the section on the price system. For those unacquainted with institutional economic writing, the volume is a readable introduction to some of the major subjects discussed by institutionalists.—HARVEY PINNEY.

Without a doubt, Richard A. Lester's *Economics of Labor* (Macmillan Co., pp. xv, 913, \$3.75) is the most thorough and lucid text to appear in the field of labor economics in recent years. Happily, Professor Lester has not made the common mistake of forgetting that labor relations, to be realistic, must be integrated with other branches of economics such as price policy and monetary theory. Perhaps the best feature of the book is the discussion of the economics of collective bargaining in relation to monopolistic competition. Although the author's emphasis has been placed upon the economics of labor in its practical application, he has not ignored such essential material as current trade union history and government's new rôle towards organized labor. Also welcome are six chapters on collective bargaining in particular industries. The author's style is extremely readable. Incorporating the labor theories of such economists as Keynes, Joan Robinson, and J. M. Clark, his presentation should make the latter's views intelligible to the average student. Falling in a bitterly

controversial field, Professor Lester's courageous eclecticism will be disappointing to partisans. But from the viewpoint of stimulating the student to an intelligent appreciation of the crux of labor's current problems, the book will not soon be surpassed.—HAROLD W. DAVEY.

The "Annual Lecture on a Master Mind" of the British Academy was delivered in 1939 by G. P. Gooch. His subject was *Hobbes* (Reprinted from the *Proceedings of the British Academy*, Vol. XXV, London, Humphrey Milford, pp. 42). The lecture contains biographical data and a synoptic treatment of Hobbes' works. In assessing Hobbes' importance, Professor Gooch gives added proof of his historical insight by stressing Hobbes' contribution to the secularization of thought and the originality of his political philosophy; and he properly minimizes the reputed indebtedness of Hobbes to Machiavelli and Bodin. The historical temperament of Professor Gooch, however, also seems to obscure his vision of the proximate, as is indicated by his intimation that modern totalitarianism is of Hobbesian derivation. In this reviewer's opinion, the obvious parallels between the two philosophies are historically and philosophically less important than the divergences. Hobbes' individualistic, egoistic, "utilitarian" premises could not possibly be the ingredients of an ideology which derives man's individuality from his position in the state, and which insists on thoroughgoing *Gleichschaltung*.—HENRY JANZEN.

*The Defense of Freedom* (Cornell University Press, pp. 63, \$1.25) consists of four addresses on the present crisis in American democracy by Edmund Ezra Day, president of Cornell University, with an Introduction by Carl L. Becker. Throughout the book, President Day maintains the thesis that the democratic way of life offers the best means of preserving and promoting human civilization. Because of this deep conviction, he considers it vitally important to analyze the dangers that threaten our democracy and to discover means and methods of combatting them. Among the serious threats discussed are (1) the armed aggression of totalitarian states, (2) the disappearance of the feeling of economic security on the part of millions of our citizens, and (3) the internal social discords which promote insecurity and restiveness of spirit and personality. In the address entitled "The Discipline of Free Men," President Day offers as the focus of our efforts to maintain effective democracy the strengthening of the individual personality and spirit through the enrichment of opportunities for personal growth and development. The book is constructive and encouraging throughout.—CATHERYN SECKLER-HUDSON.

Michael Hrushevsky, a Ukrainian nationalist and for a short time in 1918 president of the "Ukrainian Republic," spent the greater part of his

life writing a ten-volume *History of Ukraine*. The first volume appeared in 1898 and the tenth came out after the author's death in 1934. In 1911, however, he published a popular one-volume illustrated history of the Ukraine; and *A History of Ukraine*, edited by O. J. Frederiksen with a preface by George Vernadsky (published for the Ukrainian National Association by the Yale University Press, pp. xiv, 629, \$4.00) is a translation of a Ukrainian edition of this volume, published in Winnipeg, Canada. A final chapter bringing it up to date was written by Professor Frederiksen. The volume traces the history of the Ukraine from ancient times to the reunion of the Ukraine under Soviet rule in the fall of 1940. Throughout its pages, the author holds to the thesis that the Ukrainians are and have always been a separate and distinct nation. Many controversial points of Slavonic history, such as the "Kievan period," are interpreted from the nationalist Ukrainian standpoint. It is truly a "patriot's" history, written by a man with a mission—the establishment of an independent Ukrainian state. There is ample testimony in its pages that the book was prepared primarily for the encouragement and inspiration of the author's fellow-countrymen. Four maps, a bibliography, and an index complete the volume.—B. W. MAXWELL.

The biography of a talented colonial lawyer and political leader who failed to recognize the revolutionary dynamite in the dispute between the American colonies and Great Britain and sought to solve the problem by the middle way of compromise is the contribution of Julian P. Boyd in *Anglo-American Union; Joseph Galloway's Plans to Preserve the British Empire, 1774-1788* (University of Pennsylvania Press, pp. x, 185, \$2.00). The author has done an excellent historiographical job in depicting the environment and checkered career of the prominent loyalist, Joseph Galloway, and has published from manuscript Galloway's various plans to preserve union between the colonies and England. The volume presents objectively a study of the loyalist mind and should be of interest to students of American political theory as well as to historians.—BENJAMIN H. WILLIAMS.

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

CLYDE F. SNIDER

*University of Illinois*

### AMERICAN GOVERNMENT AND PUBLIC LAW

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